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Attorneys for Defendants
BROOKDALE PROVIDENT MANAGEMENT,
LLC

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TAMMY MARSHALL

Plaintiff,

v.

BROOKDALE PROVIDENT
MANAGEMENT, LLC., and DOES 1-25,
inclusive,

Defendants.

Case No.

CV 08-2172
NOTICE TO FEDERAL COURT OF
REMOVAL OF CIVIL ACTION FROM
STATE COURT (DIVERSITY)

28 U.S.C. §§ 1332, 1441, 1446

San Mateo County Superior Court
Case No. CIV 471555

ORIGINAL
FILED

APR 28 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMC

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN**
 2 **DISTRICT OF CALIFORNIA AND TO PLAINTIFF TAMMY MARSHALL AND HER**
 3 **ATTORNEY OF RECORD:**

4 PLEASE TAKE NOTICE THAT Defendant BROOKDALE PROVIDENT
 5 MANAGEMENT, LLC ("Brookdale" or "Defendant") hereby removes the above-titled action from
 6 the Superior Court of the State of California for the County of San Mateo to the United States
 7 District Court, pursuant to 28 U.S.C. §§ 1441 and 1446.

8 **I. JURISDICTION AND VENUE**

9 1. This action is a civil action over which this Court has original jurisdiction
 10 based upon the complete diversity of citizenship of the parties pursuant to section 1332(a) and is one
 11 which may be removed to this Court by Defendant pursuant to 28 U.S.C. § 1441 because it is a civil
 12 action between citizens of different states and the amount in controversy exceeds \$75,000, exclusive
 13 of interest and costs, as set forth below.

14 2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(a), 1391, 1441(a)
 15 and 1446, in that this Court is the court for the district and division embracing the place where the
 16 action is pending in state court.

17 **II. STATUS OF THE PLEADINGS**

18 3. On March 27, 2008, Plaintiff Tammy Marshall ("Plaintiff") commenced this
 19 action by filing a Summons, Civil Cover Sheet, Affidavit of Personal Delivery of Deputy Court
 20 Clerk and a Complaint in the Superior Court of the State of California, County of San Mateo,
 21 entitled *Tammy Marshall, Plaintiff v. Brookdale Provident Management, LLC., and Does 1 through*
 22 *25, inclusive, Defendants*, designated Superior Court Case No. CIV471555 ("Complaint"). True and
 23 correct copies of the Civil Action Sheet, Summons, Affidavit of Personal Delivery of Deputy Court
 24 Clerk and Complaint are attached hereto as Exhibit A. The Complaint alleged the following causes
 25 of action: (1) Retaliation – Government Code § 12940; (2) Sexual Harassment – Government Code
 26 § 12940(j); (3) Failure to Prevent Discrimination and Harassment – Government Code § 12940(k);
 27 and (4) Tortious Constructive Discharge In Violation Of Public Policy.

28 4. On March 27, 2008, the Court issued a Notice of Case Management
 Conference and Order, a copy of which is attached as Exhibit B.

5. On April 25, 2008, Defendant Brookdale filed an answer to Plaintiff's Complaint with the Superior Court, a copy of which is attached as Exhibit C.

6. A true and correct copy of the San Mateo Superior Court's Register of Actions for the case is attached hereto as Exhibit D.

7. Defendant Brookdale is informed and believes that personal service on Defendant Brookdale was completed on March 31, 2008.

8. Defendant Brookdale is informed and believes, and on that basis asserts, that as of the date of this Notice of Removal, no other individual or entity has been served with the Complaint.

9. This Notice to Federal Court of Removal of Civil Action from State Court is timely filed pursuant to 28 U.S.C. § 1446(b) because Defendant has filed this Notice within 30 days after Defendant Brookdale was served with the Complaint and within one year after commencement of this action.

10. Pursuant to 28 U.S.C. § 1446(d), written notice of this Notice of Removal to Federal Court shall be filed contemporaneously with the Clerk of the Court for the Superior Court of the County of San Mateo California and a copy shall be served on Plaintiff's counsel of record. A copy of said Notice and Proof of Service is attached hereto as Exhibit E.

11. No further proceedings have been conducted in this case in the Superior Court of San Mateo.

III. DEFENDANTS

12. The only named defendant to this action is Brookdale.

IV. DOE DEFENDANTS

13. Defendant is informed and believes that none of the Doe Defendants in this case have been identified or served. Doe Defendants designated 1 to 25 are fictitious, are not parties to this action, have not been served, and are to be disregarded for the purpose of this removal. 28 U.S.C. § 1441(a). For this reason, the Doe Defendants need not be joined in this removal. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193, n. 1 (9th Cir. 1988) (general rule that all defendants in a state action must join in removal applies only to defendants served in the action);

1 *Republic Western Ins. v. International Ins.*, 765 F. Supp. 628, 629 (N.D. Cal. 1991) ("The law of this
2 circuit [] is that defendants upon whom service has not been effected at the time the notice is filed,
3 need not join in the notice of removal").

4 **V. DIVERSITY OF CITIZENSHIP**

5 14. This action is a civil action over which this Court has original jurisdiction
6 under 28 U.S.C. § 1332 and which may be removed to this Court by Defendant pursuant to
7 28 U.S.C. § 1441(a) based on the existence of diversity of citizenship between the real parties to this
8 action and on the fact that the amount in controversy exceeds \$75,000.

9 15. The parties to this action have complete diversity of citizenship in that
10 Defendant was at the time the action was filed and remains now a citizen of Delaware and
11 Wisconsin, being a corporation formed under the laws of Delaware and having its principal place of
12 business in Wisconsin.¹ 28 U.S.C. § 1332(c)(1). Defendant is informed and believes and on that
13 basis alleges that Plaintiff was at the time of filing this action, and is now at the time of this removal,
14 a citizen of California.²

15 16. Diversity of citizenship exists so long as no plaintiff is a citizen of the same
16 state as any defendant at the time the action was filed and at the time of removal. *See Strawbridge v.*
17 *Curtiss*, 7 U.S. (3 Branch) 267 (1806); *see also United Food Local 919 v. Centermarie Properties*,
18 30 F.2d 298, 301 (2nd Cir. 1994). For purposes of removal, the citizenship of Doe Defendants are
19 disregarded and only named defendants are considered. 28 U.S.C. § 1441(a); *see Newcombe v.*
20 *Adolf Coors Co.*, 157 F.3d 690 (9th Cir. 1998).

21 17. Complete diversity of citizenship exists by and between the parties because
22 Plaintiff and Defendant, are citizens of different states. Complete diversity between Plaintiff and
23 Defendant existed both at the time the action was filed and exists now at the time of this removal.
24 Consequently, this matter may properly be removed to this Court.

25
26
27 ¹ Defendant has its corporate headquarters in Milwaukee, Wisconsin and that is where its corporate officers are located.

28 ² Plaintiff has pleaded that she resides in the County of San Mateo, California (Complaint ¶1). However, Defendant has received information to suggest that Plaintiff is actually a citizen of New York and was at the time this action was commenced. Regardless, diversity between the parties exists.

VI. AMOUNT IN CONTROVERSY

18. It is clear on the face of the Complaint that the amount in controversy exceeds this Court's jurisdictional minimum of \$75,000.³ To establish this, Defendant need only show by a preponderance of the evidence (that it is more probable than not) that Plaintiff's claimed damages exceed the jurisdictional minimum. *See Sanchez v. Monumental Life Ins. Co.*, 95 F.3d 856, 862 (9th Cir. 1996) (amended 102 F.3d 398, 404).

19. Plaintiff has pleaded four separate causes of action and has alleged damages including: "loss of salary, benefits, and additional amounts of money" (Complaint ¶ 27, p. 9:19-20; ¶ 34, p. 11:2-3; ¶ 40, p. 12:5-6; and ¶ 47, p. 13:8-9). Plaintiff's last salary was approximately \$102,000 per annum and it is now eight months since her employment ended. It will undoubtedly be over one year from when Plaintiff's employment ended until the trial in this matter. Therefore, based on past loss of earnings alone the amount in controversy exceeds \$75,000. In addition, Plaintiff claims lost past and future benefits, future loss of wages. These alleged damages easily meet the jurisdictional minimum.

20. Plaintiff has also alleged that she has suffered "humiliation, anguish, and emotional and physical distress," (*See* Complaint ¶ 28, p. 9:24-25; ¶ 35, p. 11:8-9; ¶ 41, p. 12:10-11; and ¶ 48, p. 13:13-14). In addition, Plaintiff asserted that she "developed extreme anxiety" (Complaint ¶ 13, p. 5:26), was "hospitalized" (Complaint ¶ 21, p. 8:8) and "placed on antidepressants" (Complaint ¶ 21, p. 8:9). Awards for emotional distress, particularly where the symptoms are alleged to be "extreme", medication was prescribed and that hospitalization resulted, may well exceed \$75,000. Therefore, again, on this basis alone, the amount of damages claimed by Plaintiff is more probable than not to exceed the jurisdictional minimum.

21. Further, Plaintiff has asserted claims to punitive damages with respect to all of her claims for damages (Complaint ¶¶ 29, 36, 42 and 49). Although Defendant denies that it could or should be liable for punitive damages, for purposes of assessing whether the amount in

³ See *White v. FCI USA, Inc.*, 319 F.3d 672 at 675 (2003)—lengthy list of compensatory and punitive damages including loss of pay, fringe benefits, impaired earning capacity, harm to credit, emotional distress, combined with a claim for attorney fees sufficient to meet burden that it was more likely than not that amount in controversy would exceed jurisdictional minimum.

1 controversy element has been satisfied in order to invoke diversity jurisdiction, the Ninth Circuit
 2 Court of Appeals has specifically held that such damages claimed by Plaintiff are properly included
 3 in computing the jurisdictional amount. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir.
 4 2001). Punitive damages on any one of Plaintiff's claims could meet the jurisdictional requirement.
 5 *See White v. FCI USA, Inc.*, 319 F.3d 672 at 675 (punitive damages alone was more likely than not
 6 to exceed the jurisdictional amount).

7 22. Further, Plaintiff also seeks an award of her attorney's fees with respect to her
 8 claims, which should also be considered when calculating the amount in controversy. *Goldberg v.*
 9 *C.P.C. Int'l, Inc.*, 678 F. 2d 1365, 1367 (9th Cir. 1982) (attorneys' fees included in considering
 10 jurisdictional amount). Representation of Plaintiff through trial would almost certainly exceed the
 11 \$75,000 threshold.


12 23. Thus, the preponderance of the evidence demonstrates an amount in
 13 controversy clearly in excess of \$75,000.

14 VII. CONCLUSION

15 24. Defendant, having shown that diversity exists and that the amount in
 16 controversy exceeds the jurisdiction minimal, is entitled to remove this matter to this Court.

17 25. Pursuant to 28 U.S.C. § 1441(a), Defendant removes this case from the
 18 Superior Court of the State of California in and for the County of San Mateo to this Court.

19 Dated: April 28, 2008

20 
 21 MICHELLE R. BARRETT
 22 PAUL S. COWIE
 23 LITTLER MENDELSON
 24 A Professional Corporation
 Attorneys for Defendants
 BROOKDALE PROVIDENT
 MANAGEMENT, LLC

25 Firmwide:84993030.1 051918.1024

EXHIBIT A

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): ROBERT M. LUBIN 055863 LAW OFFICES OF ROBERT M. LUBIN 177 Bovet Road, Suite 600 San Mateo, CA 94402-3191 TELEPHONE NO.: 650-638-2331 FAX NO.: 650-638-1005 ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY RECEIVED MAR 27 2008 CLERK OF THE SUPERIOR COURT SAN MATEO COUNTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS: 400 County Center MAILING ADDRESS: CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME: Southern		
CASE NAME: TAMMY MARSHALL vs BROOKDALE PROVIDENT MANAGEMENT, LLC and DOES 1 through 25, inclusive		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: CV 471555 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DPD/WD (23) Non-P/DPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DPD/WD tort (35) Employment <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Four (4)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: MARCH 28, 2007

ROBERT M. LUBIN 055863

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

BROOKDALE PROVIDENT MANAGEMENT, LLC. and DOES 1
THROUGH 25, INCLUSIVE

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

TAMMY MARSHALL

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SAN MATEO COUNTY

MAR 27 2008

Clerk of the Superior Court

DEPUTY CLERK

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO
400 County Center
Redwood City, CA 94063

CASE NUMBER:
(Número del Caso):

CV 471555

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

ROBERT M. LUBIN 055863 650-638-2331 650-638-1005
LAW OFFICES OF ROBERT M. LUBIN
177 Bovet Road, Suite 600
San Mateo, CA 94402-3191

DATE:

(Fecha) MAR 27 2008

JOHN C. FITTON

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

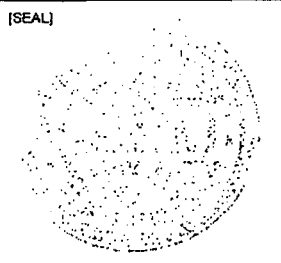
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1



LAW OFFICES OF ROBERT LUBIN
ROBERT M. LUBIN, ESQ. (055863)
JOSEPH CAMENZIND, IV (244154)
177 Bovet Road, Suite 600
San Mateo CA 94402
Telephone: 650.638-2331
Facsimile: 650.638-1005

Attorney for Plaintiff TAMMY MARSHALL

FILED
SAN MATEO COUNTY

MAR 27 2008

Clerk of the Superior Court

By  DEPUTY CLERK

RML

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

TAMMY MARSHALL

Plaintiff,

vs.

BROOKDALE PROVIDENT
MANAGEMENT, LLC. and DOES 1
through 25, inclusive

Defendants.

CASE NO. CIV

CV 471555

COMPLAINT FOR:

(1) RETALIATION; GOVT. CODE §12940
(2) SEXUAL HARASSMENT; GOVT.
CODE §12940(J)
(3) FAILURE TO PREVENT
DISCRIMINATION AND HARASSMENT;
GOVT. CODE §12940(K)
(4) TORTIOUS CONSTRUCTIVE
DISCHARGE IN VIOLATION OF PUBLIC
POLICY

Plaintiff TAMMY MARSHALL alleges as follows:

1. Plaintiff TAMMY MARSHALL is an individual who resides in San Mateo County, California. At all times herein Plaintiff was an employee covered by the California Government Code §12940 prohibiting discrimination or retaliation in employment on the basis of

MARSHALL v. BROOKDALE
COMPLAINT

1 sex.

2 2. Defendant BROOKDALE PROVIDENT MANAGEMENT, LLC.
3 ("BROOKDALE") is a Delaware Company, authorized to conduct business in the State of
4 California, principle place of business 485 Woodside Road, Redwood City, CA 94061, in the
5 County of San Mateo. Defendant is in the elderly care and housing industry. At all times herein
6 alleged, Defendant was an employer within the meaning of California Government Code
7 §12926(d).
8

9 3. Plaintiff does not know the true names and capacities of those Defendants sued
10 herein as DOES 1-25, inclusive; and therefore sues these Defendants by such fictitious names.
11 Plaintiff will amend her Complaint to allege their true names and capacities when ascertained.
12 Plaintiff is informed and believes on that basis, alleges that each Defendant sued under such
13 fictitious names is in some manner responsible for the wrongs and damages as alleged below,
14 and in so acting was functioning as the agent, servant, partner and/or employee of the co-
15 Defendants, and in doing the actions mentioned below, were acting within the course and scope
16 of his or her authority as such agent, servant, partner, and/or employee with the permission and
17 consent of the co-Defendant.
18

19 4. Plaintiff MARSHALL is originally from New York State, and is a LPN. In 2006,
20 Defendant BROOKDALE recruited Plaintiff MARSHALL to manage its Redwood City facility
21 at 485 Woodside Road, hereinafter referred to as ("Woodside Facility"). The Defendant's
22 Woodside Facility had been under severe scrutiny by the State of California for its many
23 deficiencies. The property was working on a restricted license and was at risk for closure.
24 Plaintiff was hired in essence to "clean up" the Woodside Facility.
25
26
27

28 MARSHALL v. BROOKDALE
COMPLAINT

1 5. Plaintiff MARSHALL excelled at her position, as under her management the
2 Woodside Facility obtained deficiency-free status and its reputation greatly improved. Plaintiff
3 performed so well that she was awarded a \$10,000 bonus.
4

5 6. In November 2006 John Garner, Plaintiff's supervisor, began a pattern of
6 inappropriate conduct, and unwanted sexual harassment toward Ms. MARSHALL. Mr.
7 Garner's harassment started off with him initially telling Plaintiff how much he enjoyed working
8 with her, he would state this at least 3 times a day every day, and gradually increased to
9 intolerable levels. For example:

- 10 a) During a lunch meeting Mr. Garner revealed to Plaintiff that his father molested
11 his sisters. Such a revelation was inappropriate considering the two did not have
12 any relationship outside work, and had only known each other a few months.
- 13 b) Mr. Garner told Plaintiff about a man who was terminated for tricking a female
14 coworker into touching his genitals by placing an item in his pocket and
15 encouraging her to retrieve it at a company Christmas party. Mr. Garner
16 indicated he believed it was ridiculous, and that sexual harassment in the
17 workplace has been taken way out of context.
- 18 c) Mr. Garner, who is married, told Plaintiff about an affair he had with a co-worker
19 at a previous job. He said it was a "great" experience and he would do it all over
20 again. He then proceeded to smile and glare at Plaintiff.
- 21 d) When Plaintiff left work early because she was sick on one occasion, Mr. Garner
22 called her at home at 10:00 p.m. to ask how she was feeling. Plaintiff believes it
23 was inappropriate to call her at such late an hour.
- 24 e) Mr. Garner followed Plaintiff into the stairwell, came up close behind her and
25 started massaging her shoulders with both hands. Mr. Garner stated, "You need a
26 good massage." Plaintiff responded by quickly walking away.

27 Because of these incidents, and Mr. Garner's inappropriate conduct, Plaintiff developed
28 significant anxiety, and feared confronting Mr. Garner. She actually spent many days crying.
29 For the first time in her life Plaintiff began to suffer from high blood pressure, for which she was

1 placed on medication. Plaintiff also began seeing a psychotherapist to help her with her job
2 related stress and anxiety. Mr. Garner's conduct got worse, and began to significantly interfere
3 with Plaintiff's ability to perform her job.
4

5 7. On January 29, 2007, Plaintiff was assisting a 911 unit care for an elderly patient.
6 The unit included a policeman, paramedic and fireman. Plaintiff was the only woman present,
7 aside from the patient. Mr. Garner arrived and approached Plaintiff and started discussing an
8 email. He said the email was from a Hospice company who hired a prostitute to have sex with a
9 dying patient. Plaintiff walked away and told Mr. Garner that she did not want to discuss the
10 email. Plaintiff walked towards the paramedics to answer their questions and Mr. Garner
11 followed her. Plaintiff alleges that Mr. Garner knew she was uncomfortable, but continued
12 discussing the email anyway. The entire scenario was extremely embarrassing for Plaintiff, and
13 inappropriate.
14

15 8. Immediately after the incident Plaintiff went to the HR office and told Isaac Lopez.
16 Mr. Lopez dismissed Plaintiff's concerns, and Plaintiff returned to her office humiliated and
17 began to cry. About 30 minutes later, Mr. Garner came into Plaintiff's office with a copy of the
18 email. Plaintiff told him she did not want to discuss the email. Mr. Garner asked if he offended
19 Plaintiff, and Plaintiff responded in the affirmative. Mr. Garner also discussed this email with
20 Aleta Walker, who was also offended.
21

22 9. During the first week of February 2007, Ms. MARSHALL and Ms. Walker
23 discussed the email with Mr. Garner's direct supervisor Kari Schmidt (Regional Director of
24 Operations). In addition to the email Ms. MARSHALL discussed Mr. Garner's other
25 inappropriate conduct. Ms. Schmidt promised that she would take care of the situation, but
26
27

1 Plaintiff is informed and believes that she failed to do so.

2 10. Ms. MARSHALL never heard from Ms. Schmidt and Mr. Garner's conduct
3 continued. Approximately one month later Ms. MARSHALL filed a formal complaint with
4 BROOKDALE's confidential Human Resource hotline. One to two days later Ms.
5 MARSHALL received a phone call from Ms. Schmidt, who was angry. Ms. Schmidt asked Ms.
6 MARSHALL why she filed a formal report when she stated she would handle it. Ms. Schmidt
7 was very defensive and made Ms. MARSHALL feel uncomfortable.
8

9 11. Approximately two weeks later, Ms. MARSHALL receive a call from Janet
10 Clavejo (Corporate Director of Human Resources for our region). Ms. MARSHALL explained
11 she did not feel comfortable being near Mr. Garner, and that she changed her routines to avoid
12 Mr. Garner. Ms. Clavejo simply replied that she hoped Ms. MARSHALL would get past it and
13 move forward. Ms. MARSHALL took this as Ms. Clavejo simply stating "get over it". Ms.
14 MARSHALL continued to feel her job was in jeopardy and she was being labeled a
15 troublemaker.
16

17 12. In late March, Ms. MARSHALL was on the phone in her office when Mr.
18 Garner entered and closed the door. The two were scheduled to have a conference call with a
19 third party. Mr. Garner brought his lunch, and ate it on her desk while she was on the phone.
20 When he was finished eating, he placed his feet on her desk and his hands behind his head.
21 After the call, Mr. Garner left his dishes, and the mess he made on Ms. MARSHALL's desk.
22 Plaintiff reported the incident to Gail Cimini. Mr. MARSHALL alleges that Mr. Garner did
23 these acts to make her feel inferior, and in response to her complaints.
24

25 13. At this point, Ms. MARSHALL developed extreme anxiety and was in constant
26
27

1 fear of losing her job, which was justifiable. She filed her initial complaint with Ms. Schmidt in
2 early February 2007 for which no action was taken. After she contacted BROOKDALE's
3 Human Resource Department, Ms. Schmidt demonstrated anger at her. Moreover, her
4 complaints appeared to do nothing but cause Mr. Garner to take an antagonistic approach toward
5 her.
6

7 14. On April 17, 2007, Mr. Garner struck up a conversation with Ms. MARSHALL
8 about his vacations to Florida. Mr. Garner went on to describe an incident in Florida where he
9 fell asleep on the beach, and awoke to be surrounded by naked and bare-breasted women. He was
10 laughing and stated, "he thought he died and went to heaven" Ms. MARSHALL notified Ms.
11 Schmidt, Ms. Cimini and Ms. Clavejo, about the incident and Mr. Garner was removed from the
12 property, and a memo was released indicating he resigned.
13

14 15. Ms. MARSHALL was then given the title of acting Executive Director, with her
15 RCFE license listed on the building, but was given none of the duties. BROOKDALE retained a
16 temporary employee named Mike Meehan, from Texas, to perform the duties of Executive
17 Director. Mr. Meehan did not have an RCFE license which was required. Ms. MARSHALL
18 alleges that the fact she was not given the duties of Executive Director, was retaliation for her
19 complaints regarding Mr. Garner, and the fact she was labeled acting Executive Director was
20 because BROOKDALE needed her license.
21

22 16. Ms. MARSHALL went on vacation from July 4, 2007 - July 16, 2007. During
23 this period BROOKDALE hired a new Executive Director, Linda Clark Walker. From then on
24 Ms. Clark began a pattern of constant abuse, and open hostility toward Plaintiff. Plaintiff alleges
25 that this was done in retaliation for her complaints regarding Mr. Garner, and that Ms. Clark
26
27

1 purposely wanted to push Ms. MARSHALL out of her position.

2 17. On July 11, 2007 Linda Clark Walker told Aleta Walker, in front of other
3 employees, *"I haven't even met Tammy and I know we are not going to get along."* On the
4 evening of July 11, 2007, Linda Clark Walker told Aleta Walkerr, *"I do not like the way Tammy*
5 *runs her department."* Linda Clerk Walker had been on the property two days, and had not even
6 met Ms. MARSHALL.
7

8 18. On July 12, 2007 Ms. Walker held a cabinet meeting, and publically stated to the
9 entire cabinet, *"I have not even met Tammy and I know we are going to butt heads"*. During
10 Ms. MARSHALL's vacation Ms. Walker continued to make numerous comments regarding her
11 dislike for Ms. MARSHALL, and even interviewed at least two possible replacements for Ms.
12 MARSHALL.
13

14 19. During Ms. MARSHALL's vacation, Ms. Walker stated to one BROOKDALE
15 employee that, *"Tammy is NOT in good standing with Kari (Ms. Schmidt)"*.
16

17 20. When Ms. MARSHALL returned to BROOKDALE after her vacation, Ms.
18 Walker continued her campaign to annoy, and harass Ms. MARSHALL. (1) Ms. Walker refused
19 to authorize a computer for Ms. MARSHALL, even though her computer was inoperative. Ms.
20 MARSHALL could not effectively perform her job without a computer. (2) Ms. Walker began
21 assessing new admissions, which was Ms. MARSHALL's job. (3) Ms. Walker told Ms.
22 MARSHALL she could no longer use the Pathways Hospice agency, which Ms. MARSHALL
23 had been using and for which she had developed a good working relationship with. (4) Ms.
24 Walker refused to allow Ms. MARSHALL to hire additional needed staff. (5) Ms. Walker
25 terminated Issac Lopez, one of the witnesses who heard Ms. Walker publically stated she did not
26
27

1 like Ms. MARSHALL. (6) Ms. Walker's behavior forced Aleta Walker to quit (Aleta Walker
2 and Ms. MARSHALL made the initial complaint regarding Mr. Garner to Ms. Schmidt). (6) At
3 an August 6, 2007 meeting with Plaintiff Ms. Walker in a hostile manner stated, "*I know*
4 *everyone thinks you are good at what you do, but I am NOT impressed.*", and "*I am watching*
5 *you closely and I am not happy.*"

7 21. Because of Ms. Walker's abuse and harassment, Ms. MARSHALL was soon
8 hospitalized, and placed on medical leave. For the first time in her life, Ms. MARSHALL was
9 placed on antidepressants. On August 23, 2007, while on medical leave, Ms. MARSHALL
10 learned that the locks to her office had been changed, her voice-mail was changed, her name was
11 removed from the outgoing messages, and her belongings were packed. She could no longer
12 access her email.

14 22. Based on Ms. Walker's actions and attitude toward Ms. MARSHALL, Ms.
15 Schmidt's past hostility and the fact she was locked out of her office, voice-mail and email, Ms.
16 MARSHALL reasonably concluded that her working conditions at BROOKDALE were
17 intolerable and would remain intolerable, and that she had been constructively discharged from
18 her employment with BROOKDALE.

20 23. Within one year of the termination Plaintiff filed a complaint with the Department
21 of Fair Housing & Employment ("DFEH"). The DFEH issued to Plaintiff a notice of right to
22 bring a civil action based on the charge of discrimination. A copy of this notice of right of action
23 is appended hereto, marked "Exhibit A," and is incorporated by this reference as though fully set
24 forth.

FIRST CAUSE OF ACTION
(Retaliation - Govt. Code §12940)

24. The allegations set forth in paragraphs 1 through 23 are alleged and incorporated herein by reference.

25. Defendant BROOKDALE has retaliated against Plaintiff in violation of Government Code sections 12940(h), by engaging in a course or retaliatory conduct, including, among other things, the conduct set forth in paragraphs 15 through 23 above, when she complained about sexual harassment and hostility. This retaliation was carried out by Ms. Walker, acting within the course and scope of her employment. This conduct continued until Plaintiff was constructively discharged.

26. At all times mentioned herein, Plaintiff was willing and able to perform the duties and functions of her position. Plaintiff did, in fact, perform those duties in an excellent fashion, as under her supervision BROOKDALE's Woodside facility obtained deficiency-free status and its reputation greatly improved.

27. As a proximate result of Defendant's discriminatory actions against Plaintiff as alleged above, Plaintiff has been harmed in that Plaintiff has suffered the loss of salary, benefits, and additional amounts of money she would have received if Defendant had not terminated her employment. As a result of such discrimination and consequent harm, Plaintiff has suffered such damages in an amount according to proof.

28. As a further proximate result of Defendant's discriminatory actions against Plaintiff as alleged above, Plaintiff has been harmed in that she has suffered humiliation, anguish, and emotional and physical distress. As a result of such discrimination and consequent harm, Plaintiff has suffered such damages in an amount according to proof.

6

30. The allegations set forth in paragraphs 1 through 23 are alleged and incorporated herein by reference.

14 32. As alleged in paragraphs 6 through 14 above, Mr. Garner created and allowed
15 to exist a sexually hostile environment, and discriminated against and harassed Plaintiff on the
16 basis of her sex. At all time mentioned Mr. Garner was an agent and supervisor for
17 BROOKDALE under Cal. Govt. Code 12926(r). As such Defendant is liable for Mr. Garner's
18 actions. Moreover, Defendant allowed the sexually hostile environment, discrimination and
19 harassment by Mr. Garner to continue after Plaintiff complained. Defendant failed to conduct an
20 investigation or to take all reasonable steps necessary to end the sexual harassment and sexual
21 discrimination in a timely manner.

27 _____
28 MARSHALL v. BROOKDALE
COMPLAINT

1 34. As a proximate result of Defendant's discriminatory actions against Plaintiff as
2 alleged above, Plaintiff has been harmed in that Plaintiff has suffered the loss of salary, benefits,
3 and additional amounts of money she would have received if Defendant had not terminated her
4 employment. As a result of such discrimination and consequent harm, Plaintiff has suffered such
5 damages in an amount according to proof.

6
7 35. As a further proximate result of Defendant's discriminatory actions against
8 Plaintiff as alleged above, Plaintiff has been harmed in that she has suffered humiliation,
9 anguish, and emotional and physical distress. As a result of such discrimination and consequent
10 harm, Plaintiff has suffered such damages in an amount according to proof.

11 36. The above-recited actions of Defendant were done with malice, fraud or
12 oppression, and in reckless disregard of Plaintiff's rights entitling Plaintiff to an award of
13 punitive damages.

14 WHEREFORE, Plaintiff prays judgment against Defendants as herein set forth.

15
16 **THIRD CAUSE OF ACTION**

17 **(Failure to Prevent Discrimination and Harassment - Govt. Code §12940(k))**

18 37. The allegations set forth in paragraphs 1 through 23 above are alleged and
19 incorporated herein by reference.

20 38. Defendant failed to take all reasonable steps to prevent discrimination and
21 harassment against Plaintiff from occurring, and to take immediate and appropriate corrective
22 action to remedy the harassment, in violation of Cal. Gov. Code §12940(k) as alleged in
23 paragraphs 1 through 23 of this Complaint.

24 39. At all times mentioned herein, Plaintiff was willing and able to perform the duties
25 and functions of her position. Plaintiff did, in fact, perform those duties in an excellent fashion,
26
27

28

MARSHALL v. BROOKDALE
COMPLAINT

1 as under her supervision BROOKDALE's Woodside facility obtained deficiency-free status and
2 its reputation greatly improved.

3
4 40. As a proximate result of Defendant's discriminatory actions against Plaintiff as
5 alleged above, Plaintiff has been harmed in that Plaintiff has suffered the loss of salary, benefits,
6 and additional amounts of money she would have received if Defendant had not terminated her
7 employment. As a result of such discrimination and consequent harm, Plaintiff has suffered such
8 damages in an amount according to proof.

9 41. As a further proximate result of Defendant's discriminatory actions against
10 Plaintiff as alleged above, Plaintiff has been harmed in that she has suffered humiliation,
11 anguish, and emotional and physical distress. As a result of such discrimination and consequent
12 harm, Plaintiff has suffered such damages in an amount according to proof.

13 42. The above-recited actions of Defendant were done with malice, fraud or
14 oppression, and in reckless disregard of Plaintiff's rights entitling Plaintiff to an award of
15 punitive damages.

16
17 WHEREFORE, Plaintiff prays judgment against Defendant as herein set forth.

18 **FOURTH CAUSE OF ACTION**

19 **(Tortious Constructive Discharge in Violation of Public Policy)**

20 43. The allegations set forth in paragraphs 1 through 23 above are re-alleged and
21 incorporated herein by reference.

22 44. At all times mentioned in this Complaint, California Constitution Article I,
23 Section 8 was in full force and effect and was binding on Defendants. This section requires
24 Defendants to refrain from discriminating against any employee on the basis of sex, and refrain
25 from discriminating against an employee for reporting sexual harassment.

26 45. As alleged above, Defendant violated this Section by harassing and discriminating
27

1 against Plaintiff.

2
3 46. At all times mentioned herein, Plaintiff was willing and able to perform the
4 duties and functions of her position. Plaintiff did, in fact, perform those duties in an excellent
5 fashion, as under her supervision BROOKDALE's Woodside facility obtained deficiency-free
6 status and its reputation greatly improved.

7 47. As a proximate result of Defendant's discriminatory actions against Plaintiff as
8 alleged above, Plaintiff has been harmed in that Plaintiff has suffered the loss of salary, benefits,
9 and additional amounts of money she would have received if Defendant had not terminated her
10 employment. As a result of such discrimination and consequent harm, Plaintiff has suffered such
11 damages in an amount according to proof.

12 48. As a further proximate result of Defendant's discriminatory actions against
13 Plaintiff as alleged above, Plaintiff has been harmed in that she has suffered humiliation,
14 anguish, and emotional and physical distress. As a result of such discrimination and consequent
15 harm, Plaintiff has suffered such damages in an amount according to proof.

16 49. The above-recited actions of Defendant were done with malice, fraud or
17 oppression, and in reckless disregard of Plaintiff's rights entitling Plaintiff to an award of
18 punitive damages.
19

20 WHEREFORE, Plaintiff prays for judgment against Defendant as herein set forth.

21 //

22 //

23 //

24 //

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28 MARSHALL v. BROOKDALE
COMPLAINT

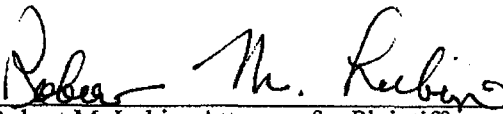
1 WHEREFORE, Plaintiff TAMMY MARSHALL prays for judgment against Defendants
2 as follows:

- 3
- 4 (1) For monetary damages in an amount proved at trial.
- 5 (2) For damages for mental pain and suffering in an amount to be proved at trial.
- 6 (3) For an award of interest, including prejudgment interest, at the legal rate.
- 7 (4) For attorney fees and costs of suit herein.
- 8 (5) For punitive damages.
- 9 (6) For an award to Plaintiff MARSHALL of such other and further relief as this

10 Court deems just and proper.

11 Dated: March 26, 2008.

LAW OFFICES OF ROBERT M. LUBIN

12
13 
14 Robert M. Lubin, Attorney for Plaintiff
15 TAMMY MARSHALL
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28 MARSHALL v. BROOKDALE
COMPLAINT



EXHIBIT

A



EXHIBIT

A

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICE AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2570 North 1st Street, Suite 480, San Jose, CA 95131
(408) 325-0344 TTY (800) 700-2320 Fax (408) 325-0339
www.dfeh.ca.gov



November 26, 2007

Robert M. Lubin
Attorney At Law
LAW OFFICES OF ROBERT M. LUBIN
177 Bovet Rd., Ste. 600
San Mateo, CA 94402-3191

RE: E200708G0572-00-sc
MARSHALL/BROOKDALE PROVIDENT MANAGEMENT, LLC

Dear Robert M. Lubin:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective November 26, 2007 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

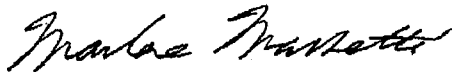
This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,



Marlene Massetti
District Administrator

cc: Case File

HUMAN RESOURCES DIRECTOR
BROOKDALE PROVIDENT MANAGEMENT, LLC
485 WOODSIDE ROAD
REDWOOD CITY, CA 94061

*** EMPLOYMENT **

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E-200708-G-0572-00-sc

DFEH USE ONLY

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (Indicate Mr. or Ms.)

Ms. Tammy Marshall

TELEPHONE NUMBER (INCLUDE AREA CODE)

650-226-3332

ADDRESS

601-627 Baltic Circle

CITY/STATE/ZIP

Redwood Shores, CA 94065

San Mateo

COUNTY CODE

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE,
OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

NAME

Brookdale Provident Management, LLC

TELEPHONE NUMBER (Include Area Code)

650-366-3900

ADDRESS

485 Woodside Rd

DFEH USE ONLY

CITY/STATE/ZIP

Redwood City, CA 94061

San Mateo

COUNTY CODE

NO. OF EMPLOYEES/MEMBERS (if known)

more than 100

DATE MOST RECENT OR CONTINUING DISCRIMINATION

TOOK PLACE (month, day, and year) Sept 7, 2007

RESPONDENT CODE

THE PARTICULARS ARE:

On Jan 07 - Sept. 7-07 I was

☐ fired☐ denied employment☐ denied family or medical leave☐ laid off☐ denied promotion☐ denied pregnancy leave☒ demoted☐ denied transfer☐ denied equal pay☒ harassed☐ denied accommodation☐ denied right to wear pants☒ genetic characteristics testing☐ impermissible non-job-related inquiry☐ denied pregnancy accommodation☒ forced to quit☐ other (specify)

by John Garner, Linda Walker, Kari Schmidt

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

because of my:

☒ sex☐ national origin/ancestry☐ physical disability☐ cancer

(Circle one) filing;

☐ age☐ marital status☐ mental disability☐ genetic characteristic

Protesting; participating in

☐ religion☐ sexual orientation☒ other (specify)

complainant about sexual harassment

investigation (retaliation for)

☐ race/color☐ association

the reason given by

Name of Person and Job Title

Was because I complained about sexual harassment and
 of [please state what it was investigated too slowly which allowed
 you believe to be reason(s)] the harassment to continue. While I was (see next page)

I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue notice. I understand that if I want a federal notice of right-to-sue, I must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated

11-9-07

Tammy Marshall

COMPLAINANT'S SIGNATURE

At

City

RECEIVED

DATE FILED:

NOV 26 2007

DFEH-300-03 (01/05)

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

DEPT. OF FAIR EMPLOYMENT AND
HOUSING SAN JOSE

STATE OF CALIFORNIA

On vacation I heard that the new Director did not like me, even though she had never met me. When I returned to work, the new Director was very hostile towards me. I subsequently left for medical reasons. While I was gone, I discovered that my employer had locked me out of my office, packed up my belongings, eliminated my voicemail message from my office phone and eliminated access to my email.

For these reasons I assert that I was terminated.

Johnny Marshall

AFFIDAVIT OF PERSONAL DELIVERY **FILED**
SAN MATEO COUNTY

MAY 27 2008

Clerk of the Superior Court
LIVE
SUPERIOR COURT

Marshall

VS

Brown Lake

CASE #

CN 471555

DOCUMENTS

Endorsed filed copies of the Complaint, Summons, Notice of Case Management Conference and ADR Packet information.

I declare under penalty of perjury that I delivered back to the customer, a true copy of the foregoing documents. Executed on the above filed date at the Hall of Justice & Records in Redwood City, CA 94063.

By: G. JACKSON
Deputy Court Clerk

EXHIBIT B

NOTICE OF CASE MANAGEMENT CONFERENCE

Matthew Hall
vs. ABC 123
CIV 471555
Case No. _____
Date: AUG 08 2008
Time: 9:00 a.m.
Dept. 3 – on Tuesday & Thursday
Dept. 28 – on Wednesday & Friday
FILED
SAN MATEO COUNTY
MAR 27 2008
Clerk of the Superior Court

You are hereby given notice of your Case Management Conference. The date, time and department have been written above.

1. In accordance with applicable California Rules of Court and Local Rules 2.3(d)1-4 and 2.3(m), you are hereby ordered to:
 - a. Serve all named defendants and file proofs of service on those defendants with the court within **60 days** of filing the complaint (CRC 201.7).
 - b. Serve a copy of this notice, Case Management Statement and ADR Information Sheet on all named parties in this action.
 - c. File and serve a completed Case Management Statement at least **15 days** before the Case Management Conference [CRC 212(g)]. Failure to do so may result in monetary sanctions.
 - d. **Meet and confer**, in person or by telephone, to consider each of the issues identified in CRC 212(f) no later than **30 days** before the date set for the Case Management Conference.
2. If you fail to follow the orders above, you are ordered to show cause why you should not be sanctioned. The Order To Show Cause hearing will be at the same time as the Case Management Conference hearing. Sanctions may include monetary, evidentiary or issue sanctions as well as striking pleadings and/or dismissal.
3. Continuances of case management conferences are highly disfavored unless good cause is shown.
4. Parties may proceed to an appropriate dispute resolution process ("ADR") by filing a Stipulation To ADR and Proposed Order (see attached form.). If plaintiff files a Stipulation To ADR and Proposed Order electing to proceed to judicial arbitration, the Case Management Conference will be taken off the court calendar and the case will be referred to the Arbitration Administrator. If plaintiffs and defendants file a completed stipulation to another ADR process (e.g., mediation) **10 days** prior to the first scheduled case management conference, the case management conference will be continued for 90 days to allow parties time to complete their ADR session. The court will notify parties of their new case management conference date.
5. If you have filed a default or a judgment has been entered, your case is not automatically taken off the Case Management Conference Calendar. If "Does", "Roes", etc. are named in your complaint, they must be dismissed in order to close the case. If any party is in bankruptcy, the case is stayed only as to that named party.
6. You are further ordered to appear in person* (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
7. The Case Management judge will issue orders at the conclusion of the conference that may include:
 - a. Referring parties to voluntary ADR and setting an ADR completion date;
 - b. Dismissing or severing claims or parties;
 - c. Setting a trial date.
8. The Case Management judge may be the trial judge in this case.

For further information regarding case management policies and procedures, see the court website at www.sanmateocourt.org.

* Telephonic appearances at case management conferences are available by contacting CourtCall, LLC, an independent vendor, at least 5 business days prior to the scheduled conference (see attached CourtCall information).

EXHIBIT C

ENDORSED FILED
SAN MATEO COUNTY

APR 25 2008

Clerk of the Superior Court
By S. YAMING
DEPUTY CLERK

MICHELLE R. BARRETT, Bar No. 197280
PAUL S. COWIE, Bar No. 250131
LITTLER MENDELSON
A Professional Corporation
650 California Street, 20th Floor
San Francisco, CA 94108.2693
Telephone: 415.433.1940
Fax No.: 415.399.8490

Attorneys for Defendant
BROOKDALE PROVIDENT MANAGEMENT
LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

BY FAX

TAMMY MARSHALL,

Plaintiff,

v.

BROOKDALE PROVIDENT
MANAGEMENT, LLC. and DOES 1
through 25, inclusive,

Defendants.

Case No. CIV 471555

DEFENDANT BROOKDALE PROVIDENT
MANAGEMENT'S ANSWER TO
COMPLAINT

Complaint Filed: March 27, 2008

COMES NOW Defendant BROOKDALE PROVIDENT MANAGEMENT LLC
("Defendant"), to answer the unverified Complaint filed by Plaintiff TAMMY MARSHALL
("Plaintiff") as follows:

GENERAL DENIAL

Pursuant to section 431.30(d) of the California Code of Civil Procedure, Defendant
hereby answers the unverified Complaint filed by Plaintiff by generally denying each and every
allegation contained therein, by denying that Plaintiff has been damaged or has sustained any
damages as a result of the conduct alleged therein, and by asserting the following separate and
distinct affirmative defenses.

LITTLER MENDELSON
A PROFESSIONAL CORPORATION
650 California Street
20th Floor
San Francisco, CA 94108.2693
415.433.1940

DEFENDANT BROOKDALE PROVIDENT
MANAGEMENT'S ANSWER TO COMPLAINT

CASE NO. CIV 471555

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses to Plaintiff's Complaint, Defendant alleges as follows:

AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that the Complaint and each and every cause of action contained therein fails to properly state claim upon which relief can be granted.

AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that all or portions of Plaintiff's claims are barred by the applicable statute of limitations, including, but not limited to, Government Code section 12960.

AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff's claims cannot be maintained against Defendant because if employees of Defendant took the actions alleged, such actions were committed outside the course and scope of such employees' employment, were not authorized, adopted or ratified by Defendant and/or Defendant did not know of nor should it have known of such conduct.

AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that the Court lacks jurisdiction over the subject matter of some or all of Plaintiff's claims by reason of Plaintiff's failure to timely exhaust administrative remedies.

AS A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff failed to adequately exhaust all of the internal remedies available to her, and that such failure bars this suit in whole or in part.

AS A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff was treated fairly and in good faith, and that all actions taken by Defendant with regard to Plaintiff were for lawful, nondiscriminatory and nonretaliatory business reasons, were not motivated by Plaintiff's alleged protected status, whether on the grounds of sex or otherwise, and were otherwise justified, privileged and/or done in good faith and/or with Plaintiff's consent.

AS A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff was an at-will employee within the meaning of California Labor Code section 2922.

1 AS AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 2 Defendant alleges that any and all conduct of which Plaintiff complains and which is attributable to
 3 Defendant was a just and proper exercise of management's discretion on the part of Defendant,
 4 undertaken for fair and honest reasons under the circumstances then existing.

5 AS A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 6 Defendant alleges that it exercised reasonable care to prevent and properly correct any harassing,
 7 discriminatory, retaliatory or otherwise unlawful behavior, and Plaintiff unreasonably failed to take
 8 advantage of any preventative or corrective opportunities provided by Defendant or to avoid harm
 9 otherwise.

10 AS A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 11 Defendant alleges that it conducted a reasonable investigation of any complaint by Plaintiff of
 12 inappropriate conduct, assuming such complaints were made, and took all necessary and appropriate
 13 action based on that investigation.

14 AS AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 15 Defendant alleges that at no time did it act purposefully, knowingly, deliberately, maliciously,
 16 oppressively, intentionally, willfully, wantonly or with any bad faith.

17 AS A TWELFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 18 Defendant alleges that at no time did it authorize, consent to or ratify any knowing, malicious,
 19 intentional, or willful conduct toward Plaintiff.

20 AS A THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 21 Defendant alleges that Plaintiff's claims for punitive and emotional distress damages are barred by
 22 the United States and California constitutions.

23 AS A FOURTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 24 Defendant alleges that the Complaint is preempted to the extent that the exclusive right and remedy for
 25 the injuries Plaintiff claims to have suffered during her employment is to be found, if at all, in workers'
 26 compensation proceedings and this Court is without subject matter jurisdiction as to those claims
 27 covered by that exclusive right and remedy (Labor Code section 3600, *et seq.*); that Defendant has a
 28 program to provide such compensation in accordance with the California Labor Code and insofar as

1 Plaintiff's alleged injuries allegedly occurred when Plaintiff was performing services incidental to her
 2 employment and where the alleged injuries were proximately caused by her employment.
 3 Alternatively, to the extent that the claims are not barred by the Workers' Compensation Act, the Court
 4 is nonetheless without jurisdiction to award damages for Plaintiff's industrial injuries, if any.

5 AS A FIFTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 6 Defendant alleges that Plaintiff's cause of action for tortious constructive discharge in violation of
 7 public policy is repetitive and redundant.

8 AS A SIXTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 9 Defendant alleges that if Plaintiff suffered any emotional distress (and Defendant denies that
 10 Plaintiff suffered any such distress), such distress was caused, in whole or in part, by a cause,
 11 condition, person or entity unrelated to and/or not employed by Defendant.

12 AS A SEVENTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 13 Defendant alleges that any recovery Plaintiff may be entitled to must be offset and/or reduced by the
 14 proportionate amount of Plaintiff's negligence, fault, bad faith, breach of common law duties and
 15 violation of statutory duties.

16 AS AN EIGHTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 17 Defendant alleges that any award to Plaintiff must be offset by all sums received by Plaintiff from
 18 any source, including, but not limited to, unemployment insurance, private insurance, state disability
 19 insurance, Social Security disability payments, workers' compensation payments, pension benefits,
 20 and any sums earned by Plaintiff in other employment.

21 AS A NINETEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 22 Defendant alleges that Plaintiff failed to mitigate her damages.

23 AS A TWENTIETH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 24 Defendant alleges that the loss incurred by Plaintiff if any, is attributable to the acts or omissions of
 25 Plaintiff, including but not limited to Plaintiff's own negligence and/or intentional misconduct

26 AS A TWENTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 27 Defendant alleges that the damages alleged in the Complaint were proximately caused by or
 28 contributed to by the acts, or failures to act, of persons or entities other than Defendant, and that
 4.

1 these acts or failures to act constitute an intervening and superseding cause of the damages and
2 injuries alleged in the Complaint.

3 AS A TWENTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE
4 DEFENSE, Defendant alleges that Plaintiff has failed to state facts sufficient to constitute a claim for
5 which attorneys' fees and costs may be granted.

6 AS A TWENTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE
7 DEFENSE, Defendant alleges that the Complaint fails to properly state a claim on which
8 prejudgment interest may be awarded.

9 AS A TWENTY-FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE
10 DEFENSE, Defendant alleges that Plaintiff's claims are barred by the equitable doctrines of
11 estoppel, waiver, unclean hands and/or laches.

12 AS A TWENTY-FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
13 Defendant alleges that Plaintiff's claims are barred, and/or her recovery of any damages is barred or
14 diminished, pursuant to the after-acquired evidence doctrine.

15 AS A TWENTY-SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE
16 DEFENSE, Defendant alleges that some or all of Plaintiff's claims are barred because Plaintiff
17 breached her contractual obligation to submit each such claim to final and binding arbitration, and/or
18 that this Court lacks jurisdiction.

19 AS A TWENTY-SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE
20 DEFENSE, Defendant alleges that some or all of Plaintiff's claims should have been submitted to
21 binding arbitration, with the result that some or all of Plaintiff's claims have been brought in the
22 wrong forum, with the result that the Court lacks jurisdiction.

23 AS A TWENTY-EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE
24 DEFENSE, Defendant alleges that it had no knowledge of any prior alleged retaliatory or otherwise
25 unlawful behavior of any of its employees, agents, or representatives.

26 AS A TWENTY-NINTH, SEPARATE AND DISTINCT AFFIRMATIVE
27 DEFENSE, Defendant alleges that Plaintiff failed to state facts sufficient to state a claim for which
28 punitive or exemplary damages may be awarded.

5.

1 AS A THIRTIETH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 2 Defendant alleges that Plaintiff's claims are unreasonable and/or asserted against Defendant in bad
 3 faith, and are frivolous, and for that reason justify an award of attorneys' fees and costs against
 4 Plaintiff pursuant to section 128.7 of the California Code of Civil Procedure and pursuant to
 5 California Rules of Court.

6 AS A THIRTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 7 Defendant alleges that it did not violate any statutory duties imposed upon it by Government Code
 8 section 12940, *et seq.*

9 AS A THIRTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE
 10 DEFENSE, Defendant alleges that any alleged wrongful conduct by Defendant does not constitute
 11 conduct in contravention of any public policy of the State of California.

12 AS A THIRTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 13 Defendant alleges that, assuming arguendo, any conduct alleged by Plaintiff occurred, such conduct
 14 was not severe or pervasive so as to alter the conditions of employment and/or create a hostile work
 15 environment.

16 AS A THIRTY-FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE
 17 DEFENSE, Defendant alleges that Plaintiff has failed to state a claim for which damages, including,
 18 but not limited to, general, compensatory, or punitive damages, may be granted.

19 AS A THIRTY-FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 20 Defendant alleges that it had implemented and at all relevant times maintained a *bona fide* policy
 21 against unlawful discrimination, harassment and retaliation.

22 AS A THIRTY-SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 23 Defendant alleges that because Plaintiff's complaint is couched in conclusory terms, all affirmative
 24 defenses that may be applicable to the within action cannot be wholly anticipated. Accordingly, the
 25 right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are
 26 applicable, is reserved.


27 WHEREFORE, Defendant prays that:

- 28 1. The Complaint be dismissed in its entirety with prejudice;

6.

2. Plaintiff take nothing by her Complaint;
3. Judgment be entered in favor of Defendant and against Plaintiff on all causes of action;
4. Defendant be awarded its costs of suit and reasonable attorneys' fees; and
5. The Court award Defendant such other and further relief as it deems appropriate.

Dated: April 25, 2008



PAUL S. COWIE
MICHELLE R. BARRETT
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
BROOKDALE PROVIDENT
MANAGEMENT LLC

Firmwide:84964880.1 051918.1000

7.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. On April 25, 2008, I served the within document(s):

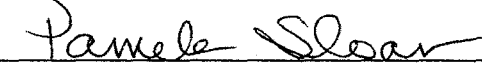
**DEFENDANT BROOKDALE PROVIDENT MANAGEMENT'S
ANSWER TO COMPLAINT**

- ☐ by facsimile transmission at or about _____ on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 415.399.8490. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- ☒ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Francisco, California addressed as set forth below.
- ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- ☐ by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

Robert M. Lubin
Joseph Camenzind, IV
177 Bovet Road, Suite 600
San Mateo, CA 94402

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 25, 2008, at San Francisco, California.



Pamela A. Sloan

Firmwide: 85032867.1 051918.1000

EXHIBIT D

Actions

Home Complaints/Parties Actions
Pending Hearings Images Case Report

Case CIV471555 - TAMMY MARSHALL VS BROOKDALE PROVIDENT MGT

Move To This Date






Viewed	Date	Action Text	Disposition	Image
N	08/08/2008 9:00 AM DEPT. 28	CASE MANAGEMENT CONFERENCE		
	04/25/2008	(S) ANSWER TO COMPLAINT OF TAMMY MARSHALL FILED BY BROOKDALE PROVIDENTMANAGEMENT,LLC, REPRESENTED BY MICHELLE R BARRETT	-	N/A
N	03/27/2008	(S) COMPLAINT FILED	-	
N	03/27/2008	CIVIL CASE COVERSHEET RECEIVED	-	
N	03/27/2008	AFFIDAVIT OF PERSONAL DELIVERY BY G JACKSON FILED	-	
N	03/27/2008	30 DAY SUMMONS, ISSUED AND FILED.	-	
	03/27/2008	PLEADING AND PARTY INFORMATION ENTERED.	-	

EXHIBIT E

MICHELLE R. BARRETT, Bar No. 197280
PAUL S. COWIE, Bar No. 250131
LITTLER MENDELSON
A Professional Corporation
650 California Street, 20th Floor
San Francisco, CA 94108.2693
Telephone: 415.433.1940
Fax No.: 415.399.8490

Attorneys for Defendant
BROOKDALE PROVIDENT MANAGEMENT LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

TAMMY MARSHALL,

Plaintiff,

v.

BROOKDALE PROVIDENT
MANAGEMENT, LLC. and DOES 1
through 25, inclusive,

Defendants.

Case No. CIV 471555

**NOTICE TO STATE COURT, PLAINTIFF
AND COUNSEL OF REMOVAL OF CIVIL
ACTION TO FEDERAL COURT UNDER
28 U.S.C. §§ 1332, 1441 AND 1446
(DIVERSITY)**


Complaint Filed: March 27, 2008

TO THE CLERK OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
AND TO THE PLAINTIFF AND HER ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that Defendant BROOKDALE PROVIDENT
MANAGEMENT, LLC has, on April 28, 2008, filed a Notice of Removal in the office of the Clerk
of the United States District Court in and for the Northern District of California. A true and correct
copy of said Notice of Removal and accompanying exhibits are attached hereto and incorporated
herein by reference as Exhibit 1.

1 PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446, the filing of
2 said Notice of Removal of Civil Action with the United States District Court, together with the filing
3 of said Notice of Removal of Civil Action with this Court, effects the removal of this action and this
4 Court may proceed no further unless and until the case is remanded.

5
6 Dated: April 28, 2008


MICHELLE R. BARRETT
PAUL S. COWIE
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
BROOKDALE PROVIDENT
MANAGEMENT LLC

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11 Firmwide:85005957.1 051918.1024
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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. On April 28, 2008, I served the within document(s):

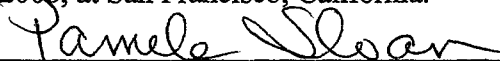
**NOTICE TO STATE COURT, PLAINTIFF AND COUNSEL OF
REMOVAL OF CIVIL ACTION TO FEDERAL COURT
UNDER 28 U.S.C. §§ 1332, 1441 AND 1446 (DIVERSITY)**

- ☐ by facsimile transmission at or about _____ on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 415.399.8490. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- ☐ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Francisco, California addressed as set forth below.
- ☒ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- ☐ by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

Robert M. Lubin
Joseph Camenzind, IV
177 Bovet Road, Suite 600
San Mateo, CA 94402

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 28, 2008, at San Francisco, California.



Pamela A. Sloan

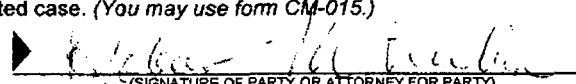
EXHIBIT A

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): ROBERT M. LUBIN 055863 LAW OFFICES OF ROBERT M. LUBIN 177 Bovet Road, Suite 600 San Mateo, CA 94402-3191 TELEPHONE NO.: 650-638-2331 FAX NO.: 650-638-1005 ATTORNEY FOR (Name): Plaintiff		RECEIVED MAR 27 2008 CLERK OF THE SUPERIOR COURT SAN MATEO COUNTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS: 400 County Center MAILING ADDRESS: CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME: Southern		
CASE NAME: TAMMY MARSHALL vs BROOKDALE PROVIDENT MANAGEMENT, LLC and DOES 1 through 25, inclusive		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Four (4)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: MARCH 28, 2007
- ROBERT M. LUBIN 055863 (TYPE OR PRINT NAME)  (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

BROOKDALE PROVIDENT MANAGEMENT, LLC. and DOES 1
THROUGH 25, INCLUSIVE

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

TAMMY MARSHALL

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SAN MATEO COUNTY

MAR 27 2008

Clerk of the Superior Court

CLERK

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO
400 County Center
Redwood City, CA 94063

CASE NUMBER:
(Número del Caso):

CV 471555

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

ROBERT M. LUBIN 055863 650-638-2331 650-638-1005
LAW OFFICES OF ROBERT M. LUBIN
177 Bovet Road, Suite 600
San Mateo, CA 94402-3191

DATE:

(Fecha) MAR 27 2008

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

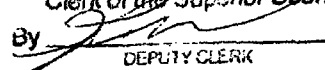
Page 1 of 1

1 *LAW OFFICES OF ROBERT LUBIN*
2 ROBERT M. LUBIN, ESQ. (055863)
3 JOSEPH CAMENZIND, IV (244154)
4 177 Bovet Road, Suite 600
5 San Mateo CA 94402
6 Telephone: 650.638-2331
7 Facsimile: 650.638-1005
8 Attorney for Plaintiff TAMMY MARSHALL

FILED
SAN MATEO COUNTY

MAR 27 2008

Clerk of the Superior Court

By  DEPUTY CLERK

RML

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN MATEO

10
11 TAMMY MARSHALL

CASE NO. CIV

CV 471555

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Plaintiff,

COMPLAINT FOR:

(1) RETALIATION; GOVT. CODE §12940

(2) SEXUAL HARASSMENT; GOVT.

CODE §12940(J)

(3) FAILURE TO PREVENT

DISCRIMINATION AND HARASSMENT;

GOVT. CODE §12940(K)

(4) TORTIOUS CONSTRUCTIVE

DISCHARGE IN VIOLATION OF PUBLIC
POLICY

BROOKDALE PROVIDENT
MANAGEMENT, LLC. and DOES 1
through 25, inclusive

Defendants.

Plaintiff TAMMY MARSHALL alleges as follows:

1. Plaintiff TAMMY MARSHALL is an individual who resides in San Mateo

County, California. At all times herein Plaintiff was an employee covered by the California

Government Code §12940 prohibiting discrimination or retaliation in employment on the basis of

MARSHALL v. BROOKDALE
COMPLAINT

1 sex.

2 2. Defendant BROOKDALE PROVIDENT MANAGEMENT, LLC.

3 ("BROOKDALE") is a Delaware Company, authorized to conduct business in the State of
4 California, principle place of business 485 Woodside Road, Redwood City, CA 94061, in the
5 County of San Mateo. Defendant is in the elderly care and housing industry. At all times herein
6 alleged, Defendant was an employer within the meaning of California Government Code
7 §12926(d).
8

9 3. Plaintiff does not know the true names and capacities of those Defendants sued
10 herein as DOES 1-25, inclusive; and therefore sues these Defendants by such fictitious names.
11 Plaintiff will amend her Complaint to allege their true names and capacities when ascertained.
12 Plaintiff is informed and believes on that basis, alleges that each Defendant sued under such
13 fictitious names is in some manner responsible for the wrongs and damages as alleged below,
14 and in so acting was functioning as the agent, servant, partner and/or employee of the co-
15 Defendants, and in doing the actions mentioned below, were acting within the course and scope
16 of his or her authority as such agent, servant, partner, and/or employee with the permission and
17 consent of the co-Defendant.
18

19 4. Plaintiff MARSHALL is originally from New York State, and is a LPN. In 2006,
20 Defendant BROOKDALE recruited Plaintiff MARSHALL to manage its Redwood City facility
21 at 485 Woodside Road, hereinafter referred to as ("Woodside Facility"). The Defendant's
22 Woodside Facility had been under severe scrutiny by the State of California for its many
23 deficiencies. The property was working on a restricted license and was at risk for closure.
24 Plaintiff was hired in essence to "clean up" the Woodside Facility.
25
26
27

1 5. Plaintiff MARSHALL excelled at her position, as under her management the
2 Woodside Facility obtained deficiency-free status and its reputation greatly improved. Plaintiff
3 performed so well that she was awarded a \$10,000 bonus.
4

5 6. In November 2006 John Garner, Plaintiff's supervisor, began a pattern of
6 inappropriate conduct, and unwanted sexual harassment toward Ms. MARSHALL. Mr.
7 Garner's harassment started off with him initially telling Plaintiff how much he enjoyed working
8 with her, he would state this at least 3 times a day every day, and gradually increased to
9 intolerable levels. For example:

- 10 a) During a lunch meeting Mr. Garner revealed to Plaintiff that his father molested
11 his sisters. Such a revelation was inappropriate considering the two did not have
12 any relationship outside work, and had only known each other a few months.
- 13 b) Mr. Garner told Plaintiff about a man who was terminated for tricking a female
14 coworker into touching his genitals by placing an item in his pocket and
15 encouraging her to retrieve it at a company Christmas party. Mr. Garner
16 indicated he believed it was ridiculous, and that sexual harassment in the
17 workplace has been taken way out of context.
- 18 c) Mr. Garner, who is married, told Plaintiff about an affair he had with a co-worker
19 at a previous job. He said it was a "great" experience and he would do it all over
20 again. He then proceeded to smile and glare at Plaintiff.
- 21 d) When Plaintiff left work early because she was sick on one occasion, Mr. Garner
22 called her at home at 10:00 p.m. to ask how she was feeling. Plaintiff believes it
23 was inappropriate to call her at such late an hour.
- 24 e) Mr. Garner followed Plaintiff into the stairwell, came up close behind her and
25 started massaging her shoulders with both hands. Mr. Garner stated, "You need a
26 good massage." Plaintiff responded by quickly walking away.

27
28 Because of these incidents, and Mr. Garner's inappropriate conduct, Plaintiff developed
29 significant anxiety, and feared confronting Mr. Garner. She actually spent many days crying.
30 For the first time in her life Plaintiff began to suffer from high blood pressure, for which she was

1 placed on medication. Plaintiff also began seeing a psychotherapist to help her with her job
2 related stress and anxiety. Mr. Garner's conduct got worse, and began to significantly interfere
3 with Plaintiff's ability to perform her job.
4

5 7. On January 29, 2007, Plaintiff was assisting a 911 unit care for an elderly patient.
6 The unit included a policeman, paramedic and fireman. Plaintiff was the only woman present,
7 aside from the patient. Mr. Garner arrived and approached Plaintiff and started discussing an
8 email. He said the email was from a Hospice company who hired a prostitute to have sex with a
9 dying patient. Plaintiff walked away and told Mr. Garner that she did not want to discuss the
10 email. Plaintiff walked towards the paramedics to answer their questions and Mr. Garner
11 followed her. Plaintiff alleges that Mr. Garner knew she was uncomfortable, but continued
12 discussing the email anyway. The entire scenario was extremely embarrassing for Plaintiff, and
13 inappropriate.
14

15 8. Immediately after the incident Plaintiff went to the HR office and told Isaac Lopez.
16 Mr. Lopez dismissed Plaintiff's concerns, and Plaintiff returned to her office humiliated and
17 began to cry. About 30 minutes later, Mr. Garner came into Plaintiff's office with a copy of the
18 email. Plaintiff told him she did not want to discuss the email. Mr. Garner asked if he offended
19 Plaintiff, and Plaintiff responded in the affirmative. Mr. Garner also discussed this email with
20 Aleta Walker, who was also offended.
21

22 9. During the first week of February 2007, Ms. MARSHALL and Ms. Walker
23 discussed the email with Mr. Garner's direct supervisor Kari Schmidt (Regional Director of
24 Operations). In addition to the email Ms. MARSHALL discussed Mr. Garner's other
25 inappropriate conduct. Ms. Schmidt promised that she would take care of the situation, but
26
27

1 Plaintiff is informed and believes that she failed to do so.

2 10. Ms. MARSHALL never heard from Ms. Schmidt and Mr. Garner's conduct
3 continued. Approximately one month later Ms. MARSHALL filed a formal complaint with
4 BROOKDALE's confidential Human Resource hotline. One to two days later Ms.
5 MARSHALL received a phone call from Ms. Schmidt, who was angry. Ms. Schmidt asked Ms.
6 MARSHALL why she filed a formal report when she stated she would handle it. Ms. Schmidt
7 was very defensive and made Ms. MARSHALL feel uncomfortable.

8 11. Approximately two weeks later, Ms. MARSHALL receive a call from Janet
9 Clavejo (Corporate Director of Human Resources for our region). Ms. MARSHALL explained
10 she did not feel comfortable being near Mr. Garner, and that she changed her routines to avoid
11 Mr. Garner. Ms. Clavejo simply replied that she hoped Ms. MARSHALL would get past it and
12 move forward. Ms. MARSHALL took this as Ms. Clavejo simply stating "get over it". Ms.
13 MARSHALL continued to feel her job was in jeopardy and she was being labeled a
14 troublemaker.

15 12. In late March, Ms. MARSHALL was on the phone in her office when Mr.
16 Garner entered and closed the door. The two were scheduled to have a conference call with a
17 third party. Mr. Garner brought his lunch, and ate it on her desk while she was on the phone.
18 When he was finished eating, he placed his feet on her desk and his hands behind his head.
19 After the call, Mr. Garner left his dishes, and the mess he made on Ms. MARSHALL's desk.
20 Plaintiff reported the incident to Gail Cimini. Mr. MARSHALL alleges that Mr. Garner did
21 these acts to make her feel inferior, and in response to her complaints.

22 13. At this point, Ms. MARSHALL developed extreme anxiety and was in constant
23

1 fear of losing her job, which was justifiable. She filed her initial complaint with Ms. Schmidt in
2 early February 2007 for which no action was taken. After she contacted BROOKDALE's
3 Human Resource Department, Ms. Schmidt demonstrated anger at her. Moreover, her
4 complaints appeared to do nothing but cause Mr. Garner to take an antagonistic approach toward
5 her.
6

7 14. On April 17, 2007, Mr. Garner struck up a conversation with Ms. MARSHALL
8 about his vacations to Florida. Mr. Garner went on to describe an incident in Florida where he
9 fell asleep on the beach, and awoke to be surrounded by naked and bare-breasted women. He was
10 laughing and stated, "he thought he died and went to heaven" Ms. MARSHALL notified Ms.
11 Schmidt, Ms. Cimini and Ms. Clavejo, about the incident and Mr. Garner was removed from the
12 property, and a memo was released indicating he resigned.
13

14 15. Ms. MARSHALL was then given the title of acting Executive Director, with her
15 RCFE license listed on the building, but was given none of the duties. BROOKDALE retained a
16 temporary employee named Mike Meehan, from Texas, to perform the duties of Executive
17 Director. Mr. Meehan did not have an RCFE license which was required. Ms. MARSHALL
18 alleges that the fact she was not given the duties of Executive Director, was retaliation for her
19 complaints regarding Mr. Garner, and the fact she was labeled acting Executive Director was
20 because BROOKDALE needed her license.
21

22 16. Ms. MARSHALL went on vacation from July 4, 2007 - July 16, 2007. During
23 this period BROOKDALE hired a new Executive Director, Linda Clark Walker. From then on
24 Ms. Clark began a pattern of constant abuse, and open hostility toward Plaintiff. Plaintiff alleges
25 that this was done in retaliation for her complaints regarding Mr. Garner, and that Ms. Clark
26
27

1 purposely wanted to push Ms. MARSHALL out of her position.

2 17. On July 11, 2007 Linda Clark Walker told Aleta Walker, in front of other
3 employees, *"I haven't even met Tammy and I know we are not going to get along."* On the
4 evening of July 11, 2007, Linda Clark Walker told Aleta Walkerr, *"I do not like the way Tammy*
5 *runs her department."* Linda Clerk Walker had been on the property two days, and had not even
6 met Ms. MARSHALL.
7

8 18. On July 12, 2007 Ms. Walker held a cabinet meeting, and publically stated to the
9 entire cabinet, *"I have not even met Tammy and I know we are going to butt heads"*. During
10 Ms. MARSHALL's vacation Ms. Walker continued to make numerous comments regarding her
11 dislike for Ms. MARSHALL, and even interviewed at least two possible replacements for Ms.
12 MARSHALL.
13

14 19. During Ms. MARSHALL's vacation, Ms. Walker stated to one BROOKDALE
15 employee that, *"Tammy is NOT in good standing with Kari (Ms. Schmidt)"*.
16

17 20. When Ms. MARSHALL returned to BROOKDALE after her vacation, Ms.
18 Walker continued her campaign to annoy, and harass Ms. MARSHALL. (1) Ms. Walker refused
19 to authorize a computer for Ms. MARSHALL, even though her computer was inoperative. Ms.
20 MARSHALL could not effectively perform her job without a computer. (2) Ms. Walker began
21 assessing new admissions, which was Ms. MARSHALL's job. (3) Ms. Walker told Ms.
22 MARSHALL she could no longer use the Pathways Hospice agency, which Ms. MARSHALL
23 had been using and for which she had developed a good working relationship with. (4) Ms.
24 Walker refused to allow Ms. MARSHALL to hire additional needed staff. (5) Ms. Walker
25 terminated Issac Lopez, one of the witnesses who heard Ms. Walker publically stated she did not
26
27

1 like Ms. MARSHALL. (6) Ms. Walker's behavior forced Aleta Walker to quit (Aleta Walker
2 and Ms. MARSHALL made the initial complaint regarding Mr. Garner to Ms. Schmidt). (6) At
3 an August 6, 2007 meeting with Plaintiff Ms. Walker in a hostile manner stated, *"I know*
4 *everyone thinks you are good at what you do, but I am NOT impressed."*, and *"I am watching*
5 *you closely and I am not happy."*
6

7 21. Because of Ms. Walker's abuse and harassment, Ms. MARSHALL was soon
8 hospitalized, and placed on medical leave. For the first time in her life, Ms. MARSHALL was
9 placed on antidepressants. On August 23, 2007, while on medical leave, Ms. MARSHALL
10 learned that the locks to her office had been changed, her voice-mail was changed, her name was
11 removed from the outgoing messages, and her belongings were packed. She could no longer
12 access her email.
13

14 22. Based on Ms. Walker's actions and attitude toward Ms. MARSHALL, Ms.
15 Schmidt's past hostility and the fact she was locked out of her office, voice-mail and email, Ms.
16 MARSHALL reasonably concluded that her working conditions at BROOKDALE were
17 intolerable and would remain intolerable, and that she had been constructively discharged from
18 her employment with BROOKDALE.
19

20 23. Within one year of the termination Plaintiff filed a complaint with the Department
21 of Fair Housing & Employment ("DFEH"). The DFEH issued to Plaintiff a notice of right to
22 bring a civil action based on the charge of discrimination. A copy of this notice of right of action
23 is appended hereto, marked "Exhibit A," and is incorporated by this reference as though fully set
24 forth.
25
26
27

28 MARSHALL v. BROOKDALE
COMPLAINT

FIRST CAUSE OF ACTION
(Retaliation - Govt. Code §12940)

24. The allegations set forth in paragraphs 1 through 23 are alleged and incorporated herein by reference.

25. Defendant BROOKDALE has retaliated against Plaintiff in violation of Government Code sections 12940(h), by engaging in a course or retaliatory conduct, including, among other things, the conduct set forth in paragraphs 15 through 23 above, when she complained about sexual harassment and hostility. This retaliation was carried out by Ms. Walker, acting within the course and scope of her employment. This conduct continued until Plaintiff was constructively discharged.

26. At all times mentioned herein, Plaintiff was willing and able to perform the duties and functions of her position. Plaintiff did, in fact, perform those duties in an excellent fashion, as under her supervision BROOKDALE's Woodside facility obtained deficiency-free status and its reputation greatly improved.

27. As a proximate result of Defendant's discriminatory actions against Plaintiff as alleged above, Plaintiff has been harmed in that Plaintiff has suffered the loss of salary, benefits, and additional amounts of money she would have received if Defendant had not terminated her employment. As a result of such discrimination and consequent harm, Plaintiff has suffered such damages in an amount according to proof.

28. As a further proximate result of Defendant's discriminatory actions against Plaintiff as alleged above, Plaintiff has been harmed in that she has suffered humiliation, anguish, and emotional and physical distress. As a result of such discrimination and consequent harm, Plaintiff has suffered such damages in an amount according to proof.

MARSHALL v. BROOKDALE
COMPLAINT

WHEREFORE, Plaintiff prays judgment against Defendants as herein set forth.

Sexual Harassment - Govt. Code §12940(j)

31. At all times mentioned, Government Code sections 12940 *et seq.* were in full force and effect and were binding on defendants. These sections require Defendants to refrain from discriminating against and harassing any employee on the basis of sex, among other things.

33. At all times mentioned herein, Plaintiff was willing and able to perform the duties and functions of her position. Plaintiff did, in fact, perform those duties in an excellent fashion, as under her supervision BROOKDALE's Woodside facility obtained deficiency-free status and its reputation greatly improved.

1 34. As a proximate result of Defendant's discriminatory actions against Plaintiff as
2 alleged above, Plaintiff has been harmed in that Plaintiff has suffered the loss of salary, benefits,
3 and additional amounts of money she would have received if Defendant had not terminated her
4 employment. As a result of such discrimination and consequent harm, Plaintiff has suffered such
5 damages in an amount according to proof.

6
7 35. As a further proximate result of Defendant's discriminatory actions against
8 Plaintiff as alleged above, Plaintiff has been harmed in that she has suffered humiliation,
9 anguish, and emotional and physical distress. As a result of such discrimination and consequent
10 harm, Plaintiff has suffered such damages in an amount according to proof.

11 36. The above-recited actions of Defendant were done with malice, fraud or
12 oppression, and in reckless disregard of Plaintiff's rights entitling Plaintiff to an award of
13 punitive damages.

14 WHEREFORE, Plaintiff prays judgment against Defendants as herein set forth.

15
16 **THIRD CAUSE OF ACTION**

17 **(Failure to Prevent Discrimination and Harassment - Govt. Code §12940(k))**

18 37. The allegations set forth in paragraphs 1 through 23 above are alleged and
19 incorporated herein by reference.

20 38. Defendant failed to take all reasonable steps to prevent discrimination and
21 harassment against Plaintiff from occurring, and to take immediate and appropriate corrective
22 action to remedy the harassment, in violation of Cal. Gov. Code §12940(k) as alleged in
23 paragraphs 1 through 23 of this Complaint.

24 39. At all times mentioned herein, Plaintiff was willing and able to perform the duties
25 and functions of her position. Plaintiff did, in fact, perform those duties in an excellent fashion,
26
27

1 as under her supervision BROOKDALE's Woodside facility obtained deficiency-free status and
2 its reputation greatly improved.

3
4 40. As a proximate result of Defendant's discriminatory actions against Plaintiff as
5 alleged above, Plaintiff has been harmed in that Plaintiff has suffered the loss of salary, benefits,
6 and additional amounts of money she would have received if Defendant had not terminated her
7 employment. As a result of such discrimination and consequent harm, Plaintiff has suffered such
8 damages in an amount according to proof.

9 41. As a further proximate result of Defendant's discriminatory actions against
10 Plaintiff as alleged above, Plaintiff has been harmed in that she has suffered humiliation,
11 anguish, and emotional and physical distress. As a result of such discrimination and consequent
12 harm, Plaintiff has suffered such damages in an amount according to proof.

13 42. The above-recited actions of Defendant were done with malice, fraud or
14 oppression, and in reckless disregard of Plaintiff's rights entitling Plaintiff to an award of
15 punitive damages.

16
17 WHEREFORE, Plaintiff prays judgment against Defendant as herein set forth.

18 **FOURTH CAUSE OF ACTION**

19 **(Tortious Constructive Discharge in Violation of Public Policy)**

20 43. The allegations set forth in paragraphs 1 through 23 above are re-alleged and
21 incorporated herein by reference.

22 44. At all times mentioned in this Complaint, California Constitution Article I,
23 Section 8 was in full force and effect and was binding on Defendants. This section requires
24 Defendants to refrain from discriminating against any employee on the basis of sex, and refrain
25 from discriminating against an employee for reporting sexual harassment.

26 45. As alleged above, Defendant violated this Section by harassing and discriminating
27

1 against Plaintiff.

2
3 46. At all times mentioned herein, Plaintiff was willing and able to perform the
4 duties and functions of her position. Plaintiff did, in fact, perform those duties in an excellent
5 fashion, as under her supervision BROOKDALE's Woodside facility obtained deficiency-free
6 status and its reputation greatly improved.

7 47. As a proximate result of Defendant's discriminatory actions against Plaintiff as
8 alleged above, Plaintiff has been harmed in that Plaintiff has suffered the loss of salary, benefits,
9 and additional amounts of money she would have received if Defendant had not terminated her
10 employment. As a result of such discrimination and consequent harm, Plaintiff has suffered such
11 damages in an amount according to proof.

12 48. As a further proximate result of Defendant's discriminatory actions against
13 Plaintiff as alleged above, Plaintiff has been harmed in that she has suffered humiliation,
14 anguish, and emotional and physical distress. As a result of such discrimination and consequent
15 harm, Plaintiff has suffered such damages in an amount according to proof.

16 49. The above-recited actions of Defendant were done with malice, fraud or
17 oppression, and in reckless disregard of Plaintiff's rights entitling Plaintiff to an award of
18 punitive damages.
19

20 WHEREFORE, Plaintiff prays for judgment against Defendant as herein set forth.

21 //

22 //

23 //

24 //

25 //

26

27

28


MARSHALL v. BROOKDALE
COMPLAINT

1 WHEREFORE, Plaintiff TAMMY MARSHALL prays for judgment against Defendants
2 as follows:

- 3
- 4 (1) For monetary damages in an amount proved at trial.
- 5 (2) For damages for mental pain and suffering in an amount to be proved at trial.
- 6 (3) For an award of interest, including prejudgment interest, at the legal rate.
- 7 (4) For attorney fees and costs of suit herein.
- 8 (5) For punitive damages.
- 9
- 10 (6) For an award to Plaintiff MARSHALL of such other and further relief as this
11 Court deems just and proper.

12 Dated: March 26, 2008.

LAW OFFICES OF ROBERT M. LUBIN

13
14 
15 Robert M. Lubin, Attorney for Plaintiff
16 TAMMY MARSHALL
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27

28 MARSHALL v. BROOKDALE
COMPLAINT



EXHIBIT

A



EXHIBIT

A

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICE AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2570 North 1st Street, Suite 480, San Jose, CA 95131
(408) 325-0344 TTY (800) 700-2320 Fax (408) 325-0339
www.dfeh.ca.gov



November 26, 2007

Robert M. Lubin
Attorney At Law
LAW OFFICES OF ROBERT M. LUBIN
177 Bovet Rd., Ste. 600
San Mateo, CA 94402-3191

RE: E200708G0572-00-sc
MARSHALL/BROOKDALE PROVIDENT MANAGEMENT, LLC

Dear Robert M. Lubin:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective November 26, 2007 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

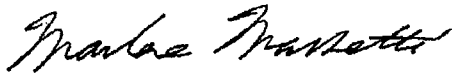
This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marlene Massetti".

Marlene Massetti
District Administrator

cc: Case File

HUMAN RESOURCES DIRECTOR
BROOKDALE PROVIDENT MANAGEMENT, LLC
485 WOODSIDE ROAD
REDWOOD CITY, CA 94061

DFEH-200-43 (06/06)

*** EMPLOYMENT **

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E-200708-G-0572-00-sc

DFEH USE ONLY

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (Indicate Mr. or Ms.)

Ms. Tammy Marshall

TELEPHONE NUMBER (INCLUDE AREA CODE)

650-226-3332

ADDRESS

601-627 Baltic Circle

CITY/STATE/ZIP

Redwood Shores, CA 94065

COUNTY

San Mateo

COUNTY CODE

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE,
OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

NAME

Brookdale Provident Management, LLC

TELEPHONE NUMBER (Include Area Code)

650-366-3900

ADDRESS

485 Woodside Rd

DFEH USE ONLY

CITY/STATE/ZIP

Redwood City, CA 94061

COUNTY

San Mateo

COUNTY CODE

NO. OF EMPLOYEES/MEMBERS (if known)

more than 100

DATE MOST RECENT OR CONTINUING DISCRIMINATION

TOOK PLACE (month, day, and year) Sept. 7, 2007

RESPONDENT CODE

THE PARTICULARS ARE:

On Jan 07 - Sept. 7-07 I was

☐ fired☐ laid off☒ demoted☒ harassed☐ genetic characteristics testing☒ forced to quit☐ denied employment☐ denied promotion☐ denied transfer☐ denied accommodation☐ impermissible non-job-related inquiry☐ other (specify)☐ denied family or medical leave☐ denied pregnancy leave☐ denied equal pay☐ denied right to wear pants☐ denied pregnancy accommodation

by John Garner, Linda Walker, Kari Schmidt

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

because of my:

☒ sex☐ age☐ religion☐ race/color☐ national origin/ancestry☐ marital status☐ sexual orientation☐ association☐ physical disability☐ mental disability☐ cancer☐ genetic characteristics☒ other (specify) complaining about sexual harassment

(Circle one) filing:

Protesting; participating in investigation (retaliation for)

the reason given by

Name of Person and Job Title

Was because I complained about sexual harassment and
 of [please state what it was investigated too slowly which allowed
 you believe to be reason(s)] the harassment to continue while I was (see next page)

I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue notice. I understand that if I want a federal notice of right-to-sue, I must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated

11-9-07

Tammy Marshall

COMPLAINANT'S SIGNATURE

At

City

RECEIVED

DATE FILED:

NOV 26 2007

DFEH-300-03 (01/05)

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

DEPT. OF FAIR EMPLOYMENT AND
HOUSING SAN JOSE

STATE OF CALIFORNIA

On vacation I heard that the new Director did not like me, even though she had never met me. When I returned to work, the new Director was very hostile towards me. I subsequently left for medical reasons. While I was gone, I discovered that my employer had locked me out of my office, packed up my belongings, eliminated my voicemail message from my office phone and eliminated access to my email.

For these reasons I assert that I was terminated.

Tammy Marshall

AFFIDAVIT OF PERSONAL DELIVERY

FILED
SAN MATEO COUNTY

APR 27 2008

CLERK OF SUPERIOR COURT
BY *[Signature]*
DEPUTY CLERK

mapstall

VS

Apr 27 date

CASE #

CN 471555

DOCUMENTS

Endorsed filed copies of the Complaint, Summons, Notice of Case Management Conference and ADR Packet information.

I declare under penalty of perjury that I delivered back to the customer, a true copy of the foregoing documents. Executed on the above filed date at the Hall of Justice & Records in Redwood City, CA 94063.

By: G. JACKSON
Deputy Court Clerk

EXHIBIT B

NOTICE OF CASE MANAGEMENT CONFERENCE

Matthew Hall
vs. ABC 123
CIV 471555
Case No. _____
Date: AUG 08 2008
Time: 9:00 a.m.
Dept. 3 – on Tuesday & Thursday
Dept. 28 – on Wednesday & Friday
FILED
SAN MATEO COUNTY
MAR 27 2008
Clerk of the Superior Court

You are hereby given notice of your Case Management Conference. The date, time and department have been written above.

1. In accordance with applicable California Rules of Court and Local Rules 2.3(d)1-4 and 2.3(m), you are hereby ordered to:
 - a. Serve all named defendants and file proofs of service on those defendants with the court within 60 days of filing the complaint (CRC 201.7).
 - b. Serve a copy of this notice, Case Management Statement and ADR Information Sheet on all named parties in this action.
 - c. File and serve a completed Case Management Statement at least 15 days before the Case Management Conference [CRC 212(g)]. Failure to do so may result in monetary sanctions.
 - d. Meet and confer, in person or by telephone, to consider each of the issues identified in CRC 212(f) no later than 30 days before the date set for the Case Management Conference.

2. If you fail to follow the orders above, you are ordered to show cause why you should not be sanctioned. The Order To Show Cause hearing will be at the same time as the Case Management Conference hearing. Sanctions may include monetary, evidentiary or issue sanctions as well as striking pleadings and/or dismissal.

3. Continuances of case management conferences are highly disfavored unless good cause is shown.
4. Parties may proceed to an appropriate dispute resolution process ("ADR") by filing a Stipulation To ADR and Proposed Order (see attached form.). If plaintiff files a Stipulation To ADR and Proposed Order electing to proceed to judicial arbitration, the Case Management Conference will be taken off the court calendar and the case will be referred to the Arbitration Administrator. If plaintiffs and defendants file a completed stipulation to another ADR process (e.g., mediation) 10 days prior to the first scheduled case management conference, the case management conference will be continued for 90 days to allow parties time to complete their ADR session. The court will notify parties of their new case management conference date.
5. If you have filed a default or a judgment has been entered, your case is not automatically taken off the Case Management Conference Calendar. If "Does", "Roes", etc. are named in your complaint, they must be dismissed in order to close the case. If any party is in bankruptcy, the case is stayed only as to that named party.
6. You are further ordered to appear in person* (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
7. The Case Management judge will issue orders at the conclusion of the conference that may include:
 - a. Referring parties to voluntary ADR and setting an ADR completion date;
 - b. Dismissing or severing claims or parties;
 - c. Setting a trial date.
8. The Case Management judge may be the trial judge in this case.

For further information regarding case management policies and procedures, see the court website at www.sanmateocourt.org.

* Telephonic appearances at case management conferences are available by contacting CourtCall, LLC, an independent vendor, at least 5 business days prior to the scheduled conference (see attached CourtCall information).

EXHIBIT C

1 MICHELLE R. BARRETT, Bar No. 197280
2 PAUL S. COWIE, Bar No. 250131
3 LITTLER MENDELSON
4 A Professional Corporation
5 650 California Street, 20th Floor
6 San Francisco, CA 94108.2693
7 Telephone: 415.433.1940
8 Fax No.: 415.399.8490

9 Attorneys for Defendant
10 BROOKDALE PROVIDENT MANAGEMENT
11 LLC

ENDORSED FILED
SAN MATEO COUNTY

APR 25 2008

Clerk of the Superior Court
By S. YAMING
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

BY FAX

11 TAMMY MARSHALL,

12 Plaintiff,

13 v.

14 BROOKDALE PROVIDENT
15 MANAGEMENT, LLC. and DOES 1
through 25, inclusive,

16 Defendants.

Case No. CIV 471555

DEFENDANT BROOKDALE PROVIDENT
MANAGEMENT'S ANSWER TO
COMPLAINT

Complaint Filed: March 27, 2008

19 COMES NOW Defendant BROOKDALE PROVIDENT MANAGEMENT LLC
20 ("Defendant"), to answer the unverified Complaint filed by Plaintiff TAMMY MARSHALL
21 ("Plaintiff") as follows:

22 GENERAL DENIAL

23 Pursuant to section 431.30(d) of the California Code of Civil Procedure, Defendant
24 hereby answers the unverified Complaint filed by Plaintiff by generally denying each and every
25 allegation contained therein, by denying that Plaintiff has been damaged or has sustained any
26 damages as a result of the conduct alleged therein, and by asserting the following separate and
27 distinct affirmative defenses.

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses to Plaintiff's Complaint, Defendant alleges as follows:

AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that the Complaint and each and every cause of action contained therein fails to properly state claim upon which relief can be granted.

AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that all or portions of Plaintiff's claims are barred by the applicable statute of limitations, including, but not limited to, Government Code section 12960.

AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff's claims cannot be maintained against Defendant because if employees of Defendant took the actions alleged, such actions were committed outside the course and scope of such employees' employment, were not authorized, adopted or ratified by Defendant and/or Defendant did not know of nor should it have known of such conduct.

AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that the Court lacks jurisdiction over the subject matter of some or all of Plaintiff's claims by reason of Plaintiff's failure to timely exhaust administrative remedies.

AS A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff failed to adequately exhaust all of the internal remedies available to her, and that such failure bars this suit in whole or in part.

AS A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff was treated fairly and in good faith, and that all actions taken by Defendant with regard to Plaintiff were for lawful, nondiscriminatory and nonretaliatory business reasons, were not motivated by Plaintiff's alleged protected status, whether on the grounds of sex or otherwise, and were otherwise justified, privileged and/or done in good faith and/or with Plaintiff's consent.

AS A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff was an at-will employee within the meaning of California Labor Code section 2922.

1 AS AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 2 Defendant alleges that any and all conduct of which Plaintiff complains and which is attributable to
 3 Defendant was a just and proper exercise of management's discretion on the part of Defendant,
 4 undertaken for fair and honest reasons under the circumstances then existing.

5 AS A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 6 Defendant alleges that it exercised reasonable care to prevent and properly correct any harassing,
 7 discriminatory, retaliatory or otherwise unlawful behavior, and Plaintiff unreasonably failed to take
 8 advantage of any preventative or corrective opportunities provided by Defendant or to avoid harm
 9 otherwise.

10 AS A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 11 Defendant alleges that it conducted a reasonable investigation of any complaint by Plaintiff of
 12 inappropriate conduct, assuming such complaints were made, and took all necessary and appropriate
 13 action based on that investigation.

14 AS AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 15 Defendant alleges that at no time did it act purposefully, knowingly, deliberately, maliciously,
 16 oppressively, intentionally, willfully, wantonly or with any bad faith.

17 AS A TWELFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 18 Defendant alleges that at no time did it authorize, consent to or ratify any knowing, malicious,
 19 intentional, or willful conduct toward Plaintiff.

20 AS A THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 21 Defendant alleges that Plaintiff's claims for punitive and emotional distress damages are barred by
 22 the United States and California constitutions.

23 AS A FOURTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 24 Defendant alleges that the Complaint is preempted to the extent that the exclusive right and remedy for
 25 the injuries Plaintiff claims to have suffered during her employment is to be found, if at all, in workers'
 26 compensation proceedings and this Court is without subject matter jurisdiction as to those claims
 27 covered by that exclusive right and remedy (Labor Code section 3600, *et seq.*); that Defendant has a
 28 program to provide such compensation in accordance with the California Labor Code and insofar as

3.

1 Plaintiff's alleged injuries allegedly occurred when Plaintiff was performing services incidental to her
2 employment and where the alleged injuries were proximately caused by her employment.
3 Alternatively, to the extent that the claims are not barred by the Workers' Compensation Act, the Court
4 is nonetheless without jurisdiction to award damages for Plaintiff's industrial injuries, if any.

5 AS A FIFTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
6 Defendant alleges that Plaintiff's cause of action for tortious constructive discharge in violation of
7 public policy is repetitive and redundant.

8 AS A SIXTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
9 Defendant alleges that if Plaintiff suffered any emotional distress (and Defendant denies that
10 Plaintiff suffered any such distress), such distress was caused, in whole or in part, by a cause,
11 condition, person or entity unrelated to and/or not employed by Defendant.

12 AS A SEVENTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
13 Defendant alleges that any recovery Plaintiff may be entitled to must be offset and/or reduced by the
14 proportionate amount of Plaintiff's negligence, fault, bad faith, breach of common law duties and
15 violation of statutory duties.

16 AS AN EIGHTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
17 Defendant alleges that any award to Plaintiff must be offset by all sums received by Plaintiff from
18 any source, including, but not limited to, unemployment insurance, private insurance, state disability
19 insurance, Social Security disability payments, workers' compensation payments, pension benefits,
20 and any sums earned by Plaintiff in other employment.

21 AS A NINETEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
22 Defendant alleges that Plaintiff failed to mitigate her damages.

23 AS A TWENTIETH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
24 Defendant alleges that the loss incurred by Plaintiff if any, is attributable to the acts or omissions of
25 Plaintiff, including but not limited to Plaintiff's own negligence and/or intentional misconduct

26 AS A TWENTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
27 Defendant alleges that the damages alleged in the Complaint were proximately caused by or
28 contributed to by the acts, or failures to act, of persons or entities other than Defendant, and that

1 these acts or failures to act constitute an intervening and superseding cause of the damages and
2 injuries alleged in the Complaint.

3 AS A TWENTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE
4 DEFENSE, Defendant alleges that Plaintiff has failed to state facts sufficient to constitute a claim for
5 which attorneys' fees and costs may be granted.

6 AS A TWENTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE
7 DEFENSE, Defendant alleges that the Complaint fails to properly state a claim on which
8 prejudgment interest may be awarded.

9 AS A TWENTY-FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE
10 DEFENSE, Defendant alleges that Plaintiff's claims are barred by the equitable doctrines of
11 estoppel, waiver, unclean hands and/or laches.

12 AS A TWENTY-FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
13 Defendant alleges that Plaintiff's claims are barred, and/or her recovery of any damages is barred or
14 diminished, pursuant to the after-acquired evidence doctrine.

15 AS A TWENTY-SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE
16 DEFENSE, Defendant alleges that some or all of Plaintiff's claims are barred because Plaintiff
17 breached her contractual obligation to submit each such claim to final and binding arbitration, and/or
18 that this Court lacks jurisdiction.

19 AS A TWENTY-SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE
20 DEFENSE, Defendant alleges that some or all of Plaintiff's claims should have been submitted to
21 binding arbitration, with the result that some or all of Plaintiff's claims have been brought in the
22 wrong forum, with the result that the Court lacks jurisdiction.

23 AS A TWENTY-EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE
24 DEFENSE, Defendant alleges that it had no knowledge of any prior alleged retaliatory or otherwise
25 unlawful behavior of any of its employees, agents, or representatives.

26 AS A TWENTY-NINTH, SEPARATE AND DISTINCT AFFIRMATIVE
27 DEFENSE, Defendant alleges that Plaintiff failed to state facts sufficient to state a claim for which
28 punitive or exemplary damages may be awarded.

5.

1 AS A THIRTIETH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 2 Defendant alleges that Plaintiff's claims are unreasonable and/or asserted against Defendant in bad
 3 faith, and are frivolous, and for that reason justify an award of attorneys' fees and costs against
 4 Plaintiff pursuant to section 128.7 of the California Code of Civil Procedure and pursuant to
 5 California Rules of Court.

6 AS A THIRTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 7 Defendant alleges that it did not violate any statutory duties imposed upon it by Government Code
 8 section 12940, *et seq.*

9 AS A THIRTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE
 10 DEFENSE, Defendant alleges that any alleged wrongful conduct by Defendant does not constitute
 11 conduct in contravention of any public policy of the State of California.

12 AS A THIRTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 13 Defendant alleges that, assuming arguendo, any conduct alleged by Plaintiff occurred, such conduct
 14 was not severe or pervasive so as to alter the conditions of employment and/or create a hostile work
 15 environment.

16 AS A THIRTY-FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE
 17 DEFENSE, Defendant alleges that Plaintiff has failed to state a claim for which damages, including,
 18 but not limited to, general, compensatory, or punitive damages, may be granted.

19 AS A THIRTY-FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 20 Defendant alleges that it had implemented and at all relevant times maintained a *bona fide* policy
 21 against unlawful discrimination, harassment and retaliation.

22 AS A THIRTY-SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
 23 Defendant alleges that because Plaintiff's complaint is couched in conclusory terms, all affirmative
 24 defenses that may be applicable to the within action cannot be wholly anticipated. Accordingly, the
 25 right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are
 26 applicable, is reserved.

27 WHEREFORE, Defendant prays that:

- 28 1. The Complaint be dismissed in its entirety with prejudice;

6.

2. Plaintiff take nothing by her Complaint;
3. Judgment be entered in favor of Defendant and against Plaintiff on all causes of action;
4. Defendant be awarded its costs of suit and reasonable attorneys' fees; and
5. The Court award Defendant such other and further relief as it deems appropriate.

Dated: April 25, 2008



PAUL S. COWIE
MICHELLE R. BARRETT
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
BROOKDALE PROVIDENT
MANAGEMENT LLC

Firmwide: 84964880.1 051918.1000

7.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. On April 25, 2008, I served the within document(s):

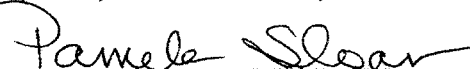
**DEFENDANT BROOKDALE PROVIDENT MANAGEMENT'S
ANSWER TO COMPLAINT**

- ☐ by facsimile transmission at or about _____ on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 415.399.8490. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- ☒ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Francisco, California addressed as set forth below.
- ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- ☐ by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

Robert M. Lubin
Joseph Camenzind, IV
177 Bovet Road, Suite 600
San Mateo, CA 94402

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 25, 2008, at San Francisco, California.



Pamela A. Sloan

Firmwide: 85032867.1 051918.1000

EXHIBIT D

Actions

Home Complaints/Parties Actions
 Pending Hearings Images Case Report

Case CIV471555 - TAMMY MARSHALL VS BROOKDALE PROVIDENT MGT

Move To This Date






Viewed	Date	Action Text	Disposition	Image
N	08/08/2008 9:00 AM DEPT. 28	CASE MANAGEMENT CONFERENCE		
	04/25/2008	(S) ANSWER TO COMPLAINT OF TAMMY MARSHALL FILED BY BROOKDALE PROVIDENTMANAGEMENT,LLC, REPRESENTED BY MICHELLE R BARRETT	-	N/A
N	03/27/2008	(S) COMPLAINT FILED	-	
N	03/27/2008	CIVIL CASE COVERSHEET RECEIVED	-	
N	03/27/2008	AFFIDAVIT OF PERSONAL DELIVERY BY G JACKSON FILED	-	
N	03/27/2008	30 DAY SUMMONS, ISSUED AND FILED.	-	
	03/27/2008	PLEADING AND PARTY INFORMATION ENTERED.	-	

EXHIBIT E

MICHELLE R. BARRETT, Bar No. 197280
PAUL S. COWIE, Bar No. 250131
LITTLER MENDELSON
A Professional Corporation
650 California Street, 20th Floor
San Francisco, CA 94108.2693
Telephone: 415.433.1940
Fax No.: 415.399.8490

Attorneys for Defendant
BROOKDALE PROVIDENT MANAGEMENT LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

TAMMY MARSHALL,

Plaintiff,

v.

BROOKDALE PROVIDENT
MANAGEMENT, LLC. and DOES 1
through 25, inclusive,

Defendants.

Case No. CIV 471555

**NOTICE TO STATE COURT, PLAINTIFF
AND COUNSEL OF REMOVAL OF CIVIL
ACTION TO FEDERAL COURT UNDER
28 U.S.C. §§ 1332, 1441 AND 1446
(DIVERSITY)**


Complaint Filed: March 27, 2008

TO THE CLERK OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
AND TO THE PLAINTIFF AND HER ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that Defendant BROOKDALE PROVIDENT
MANAGEMENT, LLC has, on April 28, 2008, filed a Notice of Removal in the office of the Clerk
of the United States District Court in and for the Northern District of California. A true and correct
copy of said Notice of Removal and accompanying exhibits are attached hereto and incorporated
herein by reference as Exhibit 1.

1 PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446, the filing of
2 said Notice of Removal of Civil Action with the United States District Court, together with the filing
3 of said Notice of Removal of Civil Action with this Court, effects the removal of this action and this
4 Court may proceed no further unless and until the case is remanded.

5
6 Dated: April 28, 2008


MICHELLE R. BARRETT
PAUL S. COWIE
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
BROOKDALE PROVIDENT
MANAGEMENT LLC

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. On April 28, 2008, I served the within document(s):

**NOTICE TO STATE COURT, PLAINTIFF AND COUNSEL OF
REMOVAL OF CIVIL ACTION TO FEDERAL COURT
UNDER 28 U.S.C. §§ 1332, 1441 AND 1446 (DIVERSITY)**

- ☐ by facsimile transmission at or about _____ on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 415.399.8490. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- ☐ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Francisco, California addressed as set forth below.
- ☒ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- ☐ by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

Robert M. Lubin
Joseph Camenzind, IV
177 Bovet Road, Suite 600
San Mateo, CA 94402

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 28, 2008, at San Francisco, California.



Pamela A. Sloan

JS 44 (Rev. 12/07) (cand rev 1-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS Marshall, Tammy	DEFENDANTS Brookdale Provident Management LLC
(b) County of Residence of First Listed Plaintiff San Mateo (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorney's (Firm Name, Address, and Telephone Number) Robert M. Lubin (055863); Joseph Camenzind IV (244154) Law Offices of Robert Lubin 177 Bovet Road, Suite 600, San Mateo, CA 94402 Telephone: 650.638.2331	Attorneys (If Known) Michelle R. Barrett (197280); Paul S. Cowie (250131) Littler Mendelson, A Professional Corporation 650 California St., 20 th Flr, San Francisco, CA 94108.2693 Telephone: 415.433.1940

E-filing

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width: 100%;"> <tr> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> </tr> <tr> <td>Citizen of This State <input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State. <input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State <input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation <input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	PTF	DEF	PTF	DEF	Citizen of This State <input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State. <input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State <input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)												
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Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS <table style="width: 100%;"> <tr> <th style="text-align: left;">PERSONAL INJURY</th> <th style="text-align: left;">PERSONAL INJURY</th> </tr> <tr> <td> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury </td> <td> <input type="checkbox"/> 362 Personal Injury — Med. 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FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES										
<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes										
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities—Employment <input type="checkbox"/> 446 Amer. w/Disabilities—Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition										

V. ORIGIN (Place an "X" in One Box Only)	<input type="checkbox"/> 1 Original Proceeding <input checked="" type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) _____ <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1332, 1441, 1446 Brief description of cause: Retaliation; Sexual Harassment; Failure to Prevent Discrimination/Harassment; Constructive Discharge
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".
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IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)	<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND <input type="checkbox"/> SAN JOSE
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DATE April 28, 2008	SIGNATURE OF ATTORNEY OF RECORD <i>Paul S. Cowie</i>	Paul S. Cowie
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